BENGAL SECRETARIAT LIBRARY

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor-General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1866.

WITH INDEX.

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INDEX

TO THE

ABSTRACT OF PROCEEDINGS

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VOL. V.

A.

Page.

ABKÁRÍ REVENUE *(Straits)* BILL.
Introduced 215
Bill considered 222
Amendment proposed and adopted 223
Bill passed ... ... *ib.*

ACT XXIII of 1840. *See Process.*
„ XVIII of 1854. *See Railway.*
„ IV of 1855. *See Assam Company.*
„ XXXI of 1860. *See Arms.*
„ XIX of 1861. *See Paper Currency.*
„ XXV of 1861. *See Procedure.*
„ XX of 1863. *See Endowments.*
„ XXI of 1863. *See Recorders.*
„ XVI of 1864. *See Registration Act Amendment (No. 2).*
„ II of 1865. *See Rural Police.*
„ V of 1865. *See Indian Marriage.*
„ XX of 1865. *See Pleaders and Mookhtars.*

ADJOURNMENTS. *See Council.*

ADMINISTRATOR GENERAL'S BILL.
Introduced and referred to Select Committee 240
Select Committee appointed 242

Page.

ADVOCATES AND ATTORNEYS. *See Pleaders and Mookhtars.*

ALLEGIANCE. Oath of—by Hon'ble G. Ross 43
„ „ H. B. Riddell 191
„ „ E. L. Brandreth 225
„ „ M. J. Shaw Stewart ... ... *ib.*
„ „ C. P. Hobhouse ... ... *ib.*
„ „ J. Skinner ... ... *ib.*
„ „ D. Cowie ... ... *ib.*

AMENDMENTS adopted ... 68, 78, 80, 90, 96, 100, 126, 127, 154, 155, 156, 157, 158, 179, 180, 185, 187, 188, 189, 214, 219, 221, 223
„ negatived 122, 124, 125
„ withdrawn 149

ARMS' ACT (XXXI *of* 1860) CONTINUANCE BILL.
Motion for leave to introduce 36
Introduced and referred to Select Committee 49
Select Committee appointed 55
„ „ report presented 69
„ „ „ considered 75
Amendment proposed and adopted 78
Bill passed ... ... *ib.*

ASSAM COMPANY'S BILL.
Motion for leave to introduce 43
Introduced and referred to Select Committee 57
Select Committee appointed 63
„ „ report presented 83
„ „ „ considered 90
Bill passed ... ... *ib.*

B.

BILLS OF EXCHANGE BILL.
Introduced and referred to Select Committee 2
Select Committee appointed 18
„ „ added to 46
„ „ report presented 63
„ „ „ considered 65
Amendment proposed and adopted 68
Bill passed 69

BOMBAY. *See High Court, Transshipment of goods.*

BRANDRETH. HON'BLE E. L.—
Allegiance. Oath of — 225
Municipal *(Panjáb)* Bill 234

Page.

BRANDRETH. HON'BLE E. L.—*continued.*
Murderous Outrages Bill 244
BRANDRETH. HON'BLE E. L.—appointed to Select Committee ... 242, 254
BULLEN. HON'BLE J. N.—
Bills of Exchange Bill 2
Paper Currency Act Amendment Bill 9,17,18
BULLEN. HON'BLE J. N.—appointed to Select Committee 19,25
BURMAH. *See Recorders.*

C.

CALCUTTA. *See Museum.*
CENTRAL PROVINCES. *See Pándhari Tax.*
CHIEF COURT. *See Panjáb.*
CIVIL PROCEDURE. *See Procedure.*
COMMANDER-IN-CHIEF. *See Mansfield.*
COMMISSIONS. *See Judges.*
COMMITTEES. *See Endowments.*
COMPANIES. *See Indian.*
CONTINUANCE. *See Arms.*
CONVERTS. *See Remarriage.*
CONVICTS. *See Escaped.*

COUNCIL OF THE GOVERNOR GENERAL FOR MAKING LAWS AND REGULATIONS.
Adjournments of— 19, 25, 28, 41, 48, 55, 63, 69, 83, 91, 94, 128, 150, 189, 192, 197, 203, 215, 223, 242, 254
Divisions of— 122, 124, 125
Meetings of— 1, 21, 27, 29, 43, 49, 57, 65, 71, 85, 93, 95, 129, 151, 191, 193, 199, 205, 217, 225, 243

COURTS OF REQUESTS' (*Straits*) BILL.
Motion to reconstitute Committee 5
Select Committee (second) appointed 19
„ „ report presented 215
„ „ „ considered 222
Bill passed ... ... *ib.*

COWIE. HON'BLE D.—
Allegiance. Oath of— 225
Bills of Exchange Bill 2
Customs Duties' Bill 143, 149
Financial Statement, 1866-67 143
Paper Currency Act Amendment Bill 9
Partnership Bill 114
COWIE. HON'BLE D.—appointed to Select Committee ... 19, 25, 41, 63, 242
CRIMINAL PROCEDURE. *See Procedure.*

Page.

CURRENCY. *See Paper Currency.*

CUSTOMS DUTIES' BILL.

Motion for leave to introduce 129
Introduced and considered 149
Amendment proposed and withdrawn ... ... *ib.*
Bill passed 150

D.

DEBATE. Error in—corrected 27

DEBATES IN COUNCIL.

Arms' Act Continuance Bill 49-54, 75-78
Bills of Exchange Bill 2-3
Customs Duties' Bill 129-49
Financial Statement, 1866-67 129-49
Limitation of Suits (*Oudh*) Bill 97-98
Oudh Sub-Settlement Bill 208-14
Paper Currency Act Amendment Bill 5-18
Partnership Bill 104-25
Post Office Bill 98-100
Procedure Criminal Code Amendment Bill 80-82
Registration Act Amendment (*No.* 2) Bill 29-35
Remarriage of Converts' Bill 158-79, 185-87

DEPOSITS. *See High Courts.*

DURAND. HON'BLE COLONEL H. M.—

Limitation of Suits (*Oudh*) Bill 98
Paper Currency Act Amendment Bill 9
Partnership Bill 119
Registration Act Amendment (*No.* 2) Bi.. ... ... 34, 35
Trustees and Mortgagees Powers' Bill 221

DURAND. HON'BLE COLONEL H. M.—appointed to Select Committee 48, 55, 83, 91, 242

DUTIES. *See Customs.*

E.

ENDOWMENTS RELIGIOUS—COMMITTEES' BILL.

Motion for leave to introduce 73
Introduced and referred to Select Committee 85
Select Committee appointed 91

ERROR. *See Debate.*

ESCAPED CONVICTS' BILL.

Introduced and referred to Select Committee 252
Select Committee appointed 254

EXECUTION. *See Process.*

Page.

EXTENSION OF ACTS. *See Indian Marriage, Penal Code, Pleaders and Mookhtars, Process, Succession.*

F.

FINANCIAL STATEMENT. *(Right Hon'ble W. N. Massey)* 129

G.

GAMBLING BILL.

Introduced and referred to Select Committee 250

Select Committee appointed 254

GANGES. *See Tolls.*

GORDON. HON'BLE S. ST. JOHN— ...

Arms' Act Amendment Bill 76

Criminal Procedure Code Amendment Bill 80

Registration Act Amendment *(No. 2)* Bill 29, 35, 83

GORDON. HON'BLE S. ST. JOHN—appointed to Select Committee 19, 25, 41, 48, 55, 63

GORDON. HON'BLE S. ST. JOHN—Death of— 91

GOVERNOR GENERAL. RIGHT HON'BLE SIR J. L. M. LAWRENCE—

Death of the Hon'ble Stewart Gordon 91

Oudh Sub-Settlement Bill 212

GREY. HON'BLE W.—

Oudh Sub-Settlement Bill 210

Post Office Bill 46, 91, 98, 100, 101

GREY. HON'BLE W.—appointed to Select Committee ... 19, 25, 55, 83, 91, 128

H.

HIGH COURT *(Bombay)* LETTERS PATENT AMENDMENT BILL.

Motion for leave to introduce 191

Introduced and considered 192

Bill passed ... ... *ib.*

HIGH COURT *(N. W. P.)* PROCEDURE BILL.

Motion for leave to introduce 193

Introduced and considered 195

Bill passed ... ... *ib.*

HIGH COURTS' DEPOSITS TRANSFER TO GOVERNMENT BILL.

Introduced and considered 196

Bill passed 197

HOBHOUSE. HON'BLE C. P.—

Administrator General's Bill 240

Allegiance. Oath of— 225

HOBHOUSE. HON'BLE C. P.—appointed to Select Committee ... 242, 253, 254

Page.

HORSE-RACING BILL.
Introduced and referred to Select Committee 247
Select Committee appointed 253
HYDERABAD. *See Indian Marriage.*

I.

INDIAN COMPANIES' BILL.
Select Committee added to 46
" " report presented 83
" " " considered 88
Amendment proposed and adopted 90
Bill passed ... ... *ib.*

INDIAN MARRIAGE ACT EXTENSION (*Hyderabad*) BILL.
Motion for leave to introduce 93
Introduced and referred to Select Committee 127
Select Committee appointed 128
" " report presented 189
" " " considered ... ... *ib.*
Amendment proposed and adopted ... ... *ib.*
Bill passed ... ... *ib.*

INDIAN PENAL CODE. *See Penal Code.*
INDIAN RAILWAY. *See Railway.*

INDIAN SHIPPING BILL.
Introduced and referred to Select Committee 236
Select Committee appointed 242
INDIAN SUCCESSION. *See Succession.*

J.

JUDGES COMMISSIONS' BILL.
Motion for leave to introduce 82
Introduced and referred to Select Committee 87
Select Committee appointed 91
" " report presented 94
" " " considered 126
Bill passed ... ... *ib.*

L.

LETTERS PATENT. *See High Court.*

LIEUTENANT GOVERNOR OF BENGAL. HON'BLE C. BEADON—
Arms' Act Continuance Bill 78
Registration Act Amendment (*No.* 2) Bill 157
Remarriage of Native Converts' Bill 176, 179, 188

Page.

LIEUTENANT GOVERNOR OF BENGAL. HON'BLE C. BEADON—appointed to Select Committee 25, 41, 91, 242

LIMITATION OF SUITS *(Oudh)* BILL.
Motion for leave to introduce 44
Introduced and referred to Select Committee 74
Select Committee appointed 83
„ „ report presented 93
„ „ „ considered 97
Bill passed 98

M.

MADRAS. *See Salt.*

MAINE. HON'BLE H. S.—
Ábkári Revenue *(Straits)* Bill 223
Arms' Act Continuance Bill 36, 49, 53, 69, 75, 77, 78
Assam Company's Bill 43, 57, 83, 90
Bills of Exchange Bill 2, 3, 46, 63, 65, 68, 69
Courts of Requests' *(Straits)* Bill 5, 215, 222
Endowments (Religious) Committees' Bill 73, 85
Escaped Convicts' Bill 252
Gambling Bill ... ... *ib.*
High Court *(Bombay)* Letters Patent Amendment Bill ... 191, 192
High Court *(N. W. P.)* Procedure Bill 193, 195
High Courts' Deposits transfer to Government Bill 197
Horse-Racing Bill 247, 253
Indian Companies' Bill 46, 83, 88, 90
Indian Marriage Act extension *(Hyderabad)* Bill ... 93, 127, 189
Judges' Commissions Bill 82, 87, 94, 126
Mortgagees and Trustees' Property Bill ... 199, 215, 217, 219, 220
Museum *(Calcutta)* Bill 63, 71, 85, 94, 126, 127
Oudh Sub-Settlement Bill 214
Panjáb Chief Court Bill 58, 62, 63
Partnership Bill 46, 94, 101, 120, 123, 124, 125, 126
Penal Code *(Straits)* Bill 225, 242
Pleaders and Mookhtars' Act extension *(N. W. P.)* Bill 1, 54, 83, 87, 88
Post Office Bill 46
Procedure, Civil *(amendment and consolidation)* Bill ... ... *ib.*
Procedure, Criminal, Code Amendment Bill ... 3, 54, 69, 79, 81, 82
Process *(Mofussil)* Execution *(Straits)* Bill ... 45, 69, 78, 79
Railway *(Indian)* Bill 46
Recorders and Small Cause Courts' *(Burmah)* Bill ... 24, 27, 35, 36
Registration Act Amendment *(No. 2)* Bill ... 34, 35, 154, 156
Remarriage of Native Converts' Bill ... 27, 158, 180, 185, 187, 188

Page.

MAINE. HON'BLE H. S.—*continued.*
Removal of Prisoners' Bill 249, 253
Succession Act, 1865, extension *(Straits)* Bill 225
Trustees and Mortgagees Powers' Bill ... 201, 215, 220, 221
MAINE. HON'BLE H. S.—appointed to Select Committee 19, 25, 41, 48, 55, 63, 83, 91, 128, 203, 242, 253, 254
MANSFIELD. HIS EXCELLENCY SIR WILLIAM—
Financial Statement, 1866-67 14
Paper Currency Act Amendment Bill 10, 27
Partnership Bill 116, 120
MARRIAGE. *See Indian.*
MASSEY. RIGHT HON'BLE W. N.—
Ábkárí Revenue *(Straits)* Bill 215, 222, 223
Customs Duties' Bill 129, 149, 150
High Courts' Deposits transfer to Government Bill... ... 196, 197
Pándharí Tax *(Central Provinces)* Bill 253
Paper Currency Act Amendment Bill ... 5, 15, 17, 18
Partnership Bill 118
Post Office Bill 100
Salt *(Madras)* Bill 150
MASSEY. RIGHT HON'BLE W. N.—appointed to Select Committee ... 203
MOFUSSIL. *See Process.*
MOOKHTARS. *See Pleaders and Mookhtars.*
MORTGAGEES, *See Trustees.*
MORTGAGEES AND TRUSTEES' PROPERTY BILL.
Introduced and referred to Select Committee 199
Select Committee appointed 203
„ „ report presented 215
„ „ „ considered 217
Amendments proposed and adopted 219
Bill passed 220
MORTGAGES. *See Trustees and Mortgagees.*
MOTIONS amended 27
postponed 63
withdrawn 149, 253
MUIR. HON'BLE W.—
Arms' Act Continuance Bill 50
Limitation of Suits *(Oudh)* Bill 44, 74, 93, 97, 98
Oudh Sub-Settlement Bill 205, 208, 210, 214
Partnership Bill 104-113, 121, 122, 123, 124
Remarriage of Native Converts' Bill 170, 185, 188

Page.

MUIR, HON'BLE W.—*continued.*
Rural Police *(N. W. P.)* Bill 3, 21
Water-courses' Bill 91, 95, 96, 97
MUIR, HON'BLE W.—appointed to Select Committee ... 41, 48, 55, 83, 91, 128, 203
MUNICIPAL *(Panjáb)* BILL.
Motion for leave to introduce 234
MURDEROUS OUTRAGES' *(Panjáb)* BILL.
Motion for leave to introduce 244
MUSEUM *(Calcutta)* BILL.
Motion for leave to introduce, postponed 63
Motion for leave to introduce 71
Introduced and referred to Select Committee 85
Select Committee appointed 91
„ „ report presented 94
„ „ „ considered 126
Amendment proposed and adopted 127
Bill passed ... ... *ib.*

N.

NATIVE CONVERTS. *See Remarriage.*
NORTH-WESTERN PROVINCES. *See High Court, Pleaders and Mookhtars.*

O.

OATH of Allegiance. *See Allegiance.*
OUDH. *See Limitation.*
OUDH SUB-SETTLEMENT BILL.
Motion for leave to introduce 205
Introduced and considered 208
Amendment proposed and adopted... 214
Bill passed ... ... *ib.*

P.

PÁNDHARÍ TAX *(Central Provinces)* BILL.
Motion for leave to introduce withdrawn 253
PANJÁB. *See Municipal, Murderous Outrages.*
PANJÁB CHIEF COURT (*No.* 2) BILL.
Motion for leave to introduce 58
Introduced and considered 62
Bill passed 63
PAPER CURRENCY ACT AMENDMENT BILL.
Introduced 5
Bill considered 17
„ passed 18
Error in debate corrected 27

	Page.
PARTNERSHIP BILL.	
Select Committee added to	46
„ „ report presented	94
„ „ „ considered	101
Amendments proposed and negatived ...	104-22, 122-24, 125
„ „ and adopted	126
Bill passed	*ib.*
PENAL CODE EXTENSION *(Straits)* BILL.	
Introduced and referred to Select Committee	225
Select Committee appointed	242
PLEADERS AND MOOKHTARS' ACT EXTENSION (*N. W. P.*) BILL.	
Motion for leave to introduce	1
Introduced and referred to Select Committee	54
Select Committee appointed	55
„ „ report presented	83
„ „ „ considered	87
Bill passed	88
POLICE. *See Rural Police.*	
POST OFFICE BILL.	
Select Committee added to	46
„ „ report presented	94
„ „ „ considered	98
Amendments proposed and adopted	100
Bill passed	101
PRISONERS. *See Removal.*	
PRIVATE. *See Water-courses.*	
PROCEDURE. *See Bills of Exchange, High Court.*	
PROCEDURE. CIVIL—*(amendment and consolidation)* BILL.	
Select Committee added to	46
PROCEDURE. CRIMINAL—CODE AMENDMENT BILL.	
Motion for leave to introduce	3
Introduced and referred to Select Committee	54
Select Committee appointed	55
„ „ report presented...	69
„ „ „ considered	79
Amendment proposed and adopted	80
Bill passed	82
PROCESS *(Mofussil)* EXECUTION *(Straits)* BILL.	
Motion to reconstitute Select Committee	45
Select Committee (second) appointed...	48
„ „ report presented	69
„ „ „ considered	78
Bill passed	79
PROPERTY LAW. *See Trustees and Mortgagees.*	

R.

Page.

RAILWAY (*Indian*) BILL.
- Introduced and referred to Select Committee 21
- Select Committee appointed 25
- „ „ added to 46
- Motion to reconstitute Select Committee 211
- Select Committee (second) appointed 242

RECONSTITUTION OF COMMITTEE. *See Select Committee.*

RECORDERS AND SMALL CAUSE COURTS' *(Burmah)* BILL.
- Introduced and reefrred to Select Committee 24
- Select Committee appointed 25
- „ „ report presented 27
- „ „ „ considered 35
- Bill passed 36

REGISTRATION ACT AMENDMENT *(No. 2)* BILL.
- Introduced and referred to Select Committee 29
- Select Committee appointed 41
- „ „ report presented 83
- „ „ „ considered 151
- Amendments proposed and adopted ... 154, 155, 156, 157, 158
- Bill passed 158

RELIGIOUS ENDOWMENTS. *See Endowments.*

REMARRIAGE OF CONVERTS' BILL.
- Select Committee report presented 27
- „ „ „ considered 158
- Amendments proposed and adopted ... 179, 180, 185, 187, 188
- Bill passed 188

REMOVAL OF PRISONERS' BILL.
- Introduced and referred to Select Committee 249
- Select Committee appointed 253

REPEAL. *See Assam Company.*

RIDDELL. HON'BLE H. B.—
- Allegiance. Oath of— 191
- Gambling Bill 250
- Ganges Tolls' Bill 239, 242
- Oudh Sub-settlement Bill 208, 214

RIDDELL. HON'BLE H. B.—appointed to Select Committee ... 203, 242, 253, 254

ROSS. HON'BLE G.—
- Allegiance. Oath of— 43

ROSS. HON'BLE G.—appointed to Select Committee 46, 63

RULES FOR THE CONDUCT OF BUSINESS. Suspension of—17, 62, 149, 150, 189, 192, 195, 197, 208

RURAL POLICE ACT *(N. W. P.)* AMENDMENT BILL.
- Select Committee report presented 3
- „ „ „ considered 21
- Bill passed ... ... *ib.*

S.

	Page.
SADR COURT. *See Pleaders and Mookhtars.*	
SÁHIB DYÁL. THE HON'BLE RÁJÁ—	
Partnership Bill	115
Remarriage of Native Converts' Bill	179
SÁHIB DYÁL. THE HON'BLE RÁJÁ—appointed to Select Committee ...	19, 55, 91
SALT *(Madras)* BILL.	
Motion for leave to introduce	150
Introduced and considered	*ib.*
Bill passed	*ib.*
SALTPETRE. *See Customs.*	
SELECT COMMITTEE. Reconstitution of—	5, 45, 241
SELECT COMMITTEES. Additions to—	46, 241

" "	Appointed.	Reports presented.	Reports considered.
Administrator General's Bill	242	...	...
Arms' Act Continuance Bill	55	69	75
Assam Company's Bill	63	83	90
Bills of Exchange Bill	18	63	65
Courts of Requests' *(Straits)* Bill *(reconstituted)*	19	215	222
Endowments, Religious, Committees' Bill ...	91	...	...
Escaped Convicts' Bill	254	...	...
Gambling Bill	254	...	...
Ganges Tolls' Bill	242	...	..
Horse-racing Bill	253	...	...
Indian Companies' Bill	...	83	88
Indian Marriage Act extension *(Hyderabad)* Bill	128	189	189
Indian Shipping Bill	242	...	...
Judges Commissions' Bill	91	94	126
Limitation of suits *(Oudh)* Bill	83	93	97
Mortgagees and Trustees' Property Bill ...	203	215	217
Museum *(Calcutta)* Bill	91	94	126
Partnership Bill	...	94	101
Penal Code extension *(Straits)* Bill ...	242	...	...
Pleaders and Mookhtars' Act extension *(N. W. P.)* Bill	55	... 83	... 87
Post Office Bill	...	94	98
Procedure, Criminal, Code Amendment Bill	55	69	79
Process *(Mofussil)* Execution *(Straits)* Bill *(reconstituted)*	48	69	78
Railway *(Indian)* Bill	25	...	...
" " *(second)*	242	...	...
Recorders and Small Cause Courts' *(Burmah)* Bill	25	27	35
Registration Act Amendment (*No.* 2) Bill ...	41	83	151
Remarriage of Converts' Bill	...	27	158
Removal of Prisoners' Bill	253	...	...
Rural Police Act *(N. W. P.)* Amendment Bill	...	8	21
Succession Act Extension *(Straits)* Bill ...	242	..	...
Trustees and Mortgagees Powers' Bill ...	203	215	220
Water-Courses' Bill	...	91	95

Page.

SETTLEMENTS. *See Trustees and Mortgagees.*

SHAW STEWART. HON'BLE M. J.—
Allegiance. Oath of— 225
Indian Shipping Bill 236
Transshipment of Goods *(Bombay)* Bill 243

SHAW STEWART. HON'BLE M. J.—appointed to Select Committee 242, 253, 254

SHIPPING. *See Indian.*

SKINNER. HON'BLE J.—
Allegiance. Oath of— 225

SKINNER. HON'BLE J.—appointed to Select Committee 242

SMALL CAUSE COURTS. *See Recorders.*

STRAITS. *See Abkári, Courts of Requests, Penal Code, Process, Succession.* ...

SUB-SETTLEMENT. *See Oudh.*

SUCCESSION ACT EXTENSION *(Straits)* BILL.
Introduced and referred to Select Committee 225
Select Committee appointed 242

T.

TAYLOR. HON'BLE G. N.—
Railway *(Indian)* Bill 21, 24, 241, 242
Registration Act Amendment (*No.* 2) Bill ... 151, 155, 156, 157, 158
Remarriage of Native Converts' Bill 178

TAYLOR. HON'BLE G. N.—appointed to Select Committee ... 19, 25, 41, 55, 242

TOLLS *(Ganges)* BILL.
Introduced and referred to Select Committee 239
Select Committee appointed 242

TRANSSHIPMENT OF GOODS *(Bombay)* BILL.
Motion for leave to introduce 243

TRUSTEES AND MORTGAGEES POWERS' BILL.
Introduced and referred to Select Committee 201
Select Committee appointed 203
„ „ report presented 215
„ „ „ considered 220
Amendments proposed and adopted 221
Bill passed ... ... *ib*

TRUSTEES. *See Mortgagees.*

V.

VIZIANAGRAM. THE HON'BLE THE MAHÁRÁJÁ OF—
Registration Act Amendment (*No.* 2) Bill 34
Remarriage of Native Converts' Bill 175

VIZIANAGRAM. THE HON'BLE THE MAHÁRÁJÁ OF—appointed to Select Committee 41, 55

Page.

W.

WATER-COURSES' BILL.
Select Committee report presented 91
„ „ „ considered 95
Amendments proposed and adopted 96
Bill passed 97
WILLS. *See Trustees and Mortgagees*

BENGAL SECRETARIAT LIBRARY

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 5th January, 1866.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Honour the Lieutenant-Governor of Bengal.
His Excellency the Commander-in-Chief.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Colonel H. M. Durand, C.B.
The Hon'ble J. N. Bullen.
The Hon'ble Mahárájá Vijayaráma Gajapati Ráj Bahádur of Vizianagram.
The Hon'ble Rájá Sáhib Dyál Bahádur.
The Hon'ble W. Muir.
The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.
The Hon'ble D. Cowie.
The Hon'ble Stewart St. John Gordon,

PLEADERS AND MOOKHTARS' ACT EXTENSION BILL.

The Hon'ble MR. MAINE, in moving for leave to introduce a Bill to extend Act No. XX of 1865 (to amend the law relating to Pleaders and Mookhtars) to the Sudder Court of the North-Western Provinces, said that, the Act referred to in the motion did not extend to the High Court of Bengal nor to the Sudder Court of the North-Western Provinces. The reason of the exemption of the latter Court was, as the Judges of that Court had justly conjectured, that its conversion into a High Court was supposed likely to occur before the Bill came into operation. The Government of India had not received any positive official information concerning a High Court for the North-Western Provinces, but there was reason to think that its establishment was contemplated, and he believed the delay to be attributable to the necessity imposed on Her Majesty's Government by a Statute of last Session of issuing new Letters Patent to the older High Courts before a certain date. Meantime the day for

the coming into operation of Act XX of 1865 had arrived, and the Judges of the Sudder Court wished to have the power of making rules under it for their Pleaders and Mookhtars. At their instance, and at that of the Government of the North-Western Provinces, he proposed to introduce this Bill.

The Motion was put and agreed to.

SUMMARY PROCEDURE ON BILLS OF EXCHANGE BILL.

The Hon'ble MR. MAINE introduced the Bill to provide a summary procedure on Bills of Exchange, and to amend, in certain respects, the Commercial Law of British India, and moved that it be referred to a Select Committee, with instructions to report in six weeks. He said, he had little to add to the observations which he offered when he obtained leave to bring it in. As to section 11, he had been in communication with the Hon'ble Rájá Sáhib Dyál, and had ascertained from him that hundís were universally accepted in writing when accepted at all; but, as he (MR. MAINE) had anticipated, they were generally made payable after date, not after sight, and thus did not require any acceptance. The first part of section 12, he (MR. MAINE) proposed to leave as it stood. The Stamp Act defined a foreign bill, as a bill drawn out of British India, and it was most dangerous to have such a bill defined one way for purposes of the Stamp Act, and another way by commercial usage. But in Committee, he would propose to add a proviso that, when a Bill in any part of India was protested, the notarial attestation should be received in all Courts as *primâ facie* evidence of dishonour.

The Hon'ble MR. COWIE said that he had been prepared to state his strong objection to section 12, under which a merchant here who might receive a dishonoured bill back from Bombay or Madras, would be compelled to resort to the expensive process of the issue of a commission to prove its presentation. The change in the Bill which the Hon'ble and learned Member had now announced was quite satisfactory.

The Hon'ble MR. BULLEN said, that he had not a word to say in opposition to this Bill going into Committee. On the contrary, he thought that his Hon'ble and learned friend (Mr. Maine) was entitled to the thanks of the mercantile community for the endeavours he was making, by the introduction of this and other Bills which he had brought into the Council that Session, to import into the Commercial Code of India those improvements in commercial legislation which of late years had been adopted in England. He agreed with what had fallen from his hon'ble friend opposite (Mr. Cowie), as to the desirableness of continuing the present practice by which a notarial protest was accepted as *primâ facie* proof of dishonour of an inland equally with a foreign bill, and was glad that the hon'ble gentleman (Mr. Maine) had expressed himself

willing to modify to this end, in Committee, section 12 of the Bill as printed. He (MR. BULLEN) would be glad to see the principle of the bills of lading Act, No. IX of 1856, which was copied from the English Statute 18 & 19 Vic., cap. 3, extended to policies of insurance. By the custom of merchants, the interest in those documents was transferable by endorsement, as in the case of bills of lading, but by law the contract between the underwriter and the assured could not be so transferred. When, therefore, an action had to be brought on a policy, it could only be brought in the name of the party to whom the policy had been granted, which was frequently productive of inconvenience. The principle was the same as that conceded by the bills of lading Act, and he thought it worthy of the consideration of the hon'ble gentleman (Mr. Maine) whether it might not be extended to contracts of assurance also.

The Hon'ble MR. MAINE thought the suggestion well worthy of consideration.

The Motion was put and agreed to.

RURAL POLICE ACT AMENDMENT BILL.

The Hon'ble MR. MUIR presented the Report of the Select Committee on the Bill to amend Act No. II of 1865 (to provide for the maintenance of the Rural Police in the Territories under the government of the Lieutenant-Governor of the North-Western Provinces and elsewhere). He said that a new section had been introduced by the Select Committee to meet an objection made by the Hon'ble the Lieutenant-Governor of the North-Western Provinces. According to that section, the local administration was authorized to lay down rules limiting the extent and exercise of the authority conferred by the first section on the Collector. As the Report would then have been in the hands of Members for a sufficient period as provided by the standing Rules of the Council, he proposed next week to move that the Bill be taken into consideration and passed.

CRIMINAL PROCEDURE ACT AMENDMENT BILL.

The Hon'ble MR. MAINE, in moving for leave to introduce a Bill to amend Act No. XXV of 1861 (for simplifying the procedure of the Courts of Criminal Judicature not established by Royal Charter), said the measure had been prepared at the urgent representation of the Governments of Madras and Bombay, and in part at the instance of the Governments of Bengal and the North-West. The necessity for the proposed change might be shortly described by stating that the Code attributed the cognizance of certain minor offences of common occurrence to a too dignified tribunal, that was, to a tribunal whose ordinary business was such that its time ought not to be taken up

with trying petty cases, or which was at too great a distance from the localities at which most of these offences were committed. The latter was the serious objection. When in India, a petty offence was tried at a great distance from the place of its commission, one of two things happened—either the prisoner, prosecutor and witnesses were exposed to disproportionate hardship, or the offence was hushed up to prevent that hardship, the latter result being the commoner when the injury to the person aggrieved was not very great. It was natural that complaints on the subject should come chiefly from Madras and Bombay, for in those Provinces, and especially in Bombay, the districts were of great extent, so that the removal of the prosecutor and witnesses to the sudder station almost amounted to expatriation. The first particular in which MR. MAINE proposed to alter the Code was in respect of theft in a building or tent. As the classification of jurisdictions in the Code of Criminal Procedure pretty closely followed the scale of punishments in the Penal Code, theft in a building had been made cognizable by a higher tribunal than common theft, because the penalty was severer. Now he must confess that the considerations which in Europe justified the imposition of a heavier penalty on theft in a dwelling-house than on theft in the open air, appeared to him scarcely to exist over much of India. It was no doubt assumed that thefts in a dwelling-house were ordinarily committed by persons standing in some relation of confidence to the owner, or that there was a greater amount of criminal intention on the part of a person who secreted himself in a house for the purpose of stealing. But the assumption did not hold good in a country in which the houses were mostly open day and night, and it would be difficult to point out any moral distinction between the act of a man who took goods from a bullock-cart and that of one who took property from a Native house by walking into it or putting his hand under the uplifted corner of a mat. The Penal Code was, however, intended to apply to stealing in houses of all descriptions, and hence no doubt the English distinction was maintained. The result, however, was described as very unfortunate in the Mofussil, where this form of theft was exceedingly common, but under the present law was either committed with impunity, or punished at the cost of much annoyance to the prosecutor and witnesses. He therefore proposed to make theft in a building, vessel or tent punishable by the same tribunals as ordinary theft. It would be understood that the relative powers of Magistrates would remain unaltered. If the offence were really petty, it would be punished by a Magistrate of the lower grade; if there were circumstances of aggfavation, it would be sent on by him to a superior authority. MR. MAINE further, at the instance of the North-Western Sudder Court, proposed to make grievous hurt punishable by the same judicial authority as simple hurt. It was represented that the time of the Courts of Session was needlessly taken up in trying cases

which only differed from hurt in the dislocation of a finger or the breaking of a tooth. The last change to be made consisted in enabling Magistrates of all grades to try charges of fouling a reservoir, or rendering the atmosphere noxious. It was difficult at all times to get the Natives of India to regard the rules of sanitary science, and to give information to the Police of acts which they looked upon as harmless: much greater must be the difficulty if the hardship of a long journey was inflicted on all who revealed the nuisance. The Local Government had suggested other changes, but, though something might be said for them, the trial of the offences named was likely, as a lawyer would perceive, to give rise to delicate questions, so that there were independent reasons for confiding trial to a Court of some dignity. Such alterations had better be reserved for that general revision of the Code of Criminal Procedure, which could not be far distant. The points now dealt with were pressing.

The Motion was put and agreed to.

COURTS OF REQUESTS (STRAITS SETTLEMENT) BILL.

The Hon'ble MR. MAINE moved that the Committee on the Bill to enlarge the jurisdiction of the Courts of Requests in the Settlement of Prince of Wales' Island, Singapore and Malacca be re-constituted. He said that the Bill had proceeded as far as a Committee, but its progress had been arrested, through the impression which prevailed that the Settlement would shortly be disannexed from India. That event, however, seemed further off than was once supposed, and he wished, at the instance of the Straits Government, to proceed with the Bill.

The Motion was put and agreed to.

GOVERNMENT PAPER CURRENCY ACT AMENDMENT BILL.

The Right Hon'ble MR. MASSEY introduced the Bill to amend Act No. XIX of 1861 (to provide for a Government Paper Currency). He said that in moving that the Bill which he had asked leave of the Council to introduce a fortnight ago should be passed through its remaining stages, he would make a very few observations in addition to the statement which he then offered to the Council. Since that statement was made, a meeting had been held by a highly respectable body, which he might say represented the commercial interests of this Presidency, for the express purpose of considering the measure; and although that meeting had not resulted in any expression of opinion hostile to the Bill, he should perhaps be wanting in that respect which he felt for those gentlemen if he simply moved that the Bill be passed through its subsequent stages without further explanation.

The object of this Bill was simply to restore the Currency Department to its proper function, which was the issue of paper and not of coin—of paper as a substitute for specie whenever the public desired to avail themselves of a more convenient medium of circulation; and of coin only in exchange for the paper which represented it.

The whole reserve of silver represented Notes in circulation and nothing more. Those reserves could not be appropriated to any other purpose without endangering the convertibility of the Notes, and thereby jeopardizing public credit.

He had explained on the former occasion the circumstances which rendered it necessary, in the opinion of the Government, to make some alterations in the existing Currency Law. If those alterations were not assented to, the Government must take one of two courses. They must maintain in the principal Circles of Issue a very much larger reserve in specie than was necessary for the legitimate purposes of the Department; in other words, they must realise wholly or in part that proportion of the fund which was invested in securities, —a proportion which, in the opinion of the late Mr. Wilson, should always amount to two-thirds of the Issue. The Government of the day, however, limited the reserve of Securities to the amount of four millions sterling, and nearly to that extent reserves of coin had been already invested. If therefore we were driven to convert the Securities, the charge imposed on the Government would be £200,000 a year, and the remaining Securities, which are the property of the public, would be depreciated if any large amount of the stock which had been withdrawn were thrown back upon the market. Such a course would not be advocated by any Member of that Council, and was one which no man of business outside would venture to propose.

But if this course were not adopted, we must be prepared at all times to pour into the Currency Circle which was under pressure the amount of coin which might be necessary for its relief. Now he would say at once that the Government was not prepared to undertake that duty. The distances in this country were very great, and the communications were not yet in that advanced stage which he trusted they would ultimately attain; but even if all such facilities were perfected, the dislocation of our monetary arrangements by the sudden transfer from one place of deposit to another of cash, which was distributed with reference to the exigencies of the public service, would always be attended with great inconvenience and cost, and might seriously affect the public credit. He had said that they had already invested Securities to the amount sanctioned by the Act. That amount represented one-half the amount of the paper in circulation. During the last month alone, bullion to the value of a

million and a quarter pounds sterling had been cashed in one of the Presidency Towns. Therefore, if the demand on the Department was to go on on that scale, they would have no alternative but to realise Securities.

But there was a third alternative. It had been suggested that the present difficulty had been caused by the reduction of the cash-balances. It might be sufficient for him to say that he was not responsible for that reduction, and that the Government as at present constituted was not responsible for that reduction. He would not say whether that diminution was politic or not. They had only to deal with the fact, and it was well known to all who heard him, that the reserves at the present moment were not in surplus, and that they could not hope from the spontaneous action of their existing revenue, that the cash-balances would be raised to the amount which they formerly attained. But if they had a surplus of revenue in their treasury, in his opinion that surplus would be demanded by other objects than the accommodation of dealers in bullion. There was no probability that any part of the cash-balances would ever be appropriated to any such purpose.

This brought him to the question, what public benefit was to be derived from maintaining the present facilities afforded to the importers of bullion? Were the interests of commerce concerned? Was the general prosperity of the country involved in maintaining this anomalous charge on the Department of Issue? As the question had been raised, he must say that there was no pretence whatever for any such assertion, and that the benefit derived from the present state of the law was a benefit which was enjoyed merely by individuals, and which accrued to the advantage of a certain class of speculators. In his judgment it was a benefit which did not conduce to the welfare of the country, or the sound interests of commerce. He was very glad to think, from the proceedings which took place at the respectable assemblage which was held the other day, that he was not called upon to urge these arguments further, or to contend at any length in favour of this Bill. The resolution to which the Chamber of Commerce came was one with which he had no fault to find. It did very little more than reiterate what he himself stated when he had the honour to move for leave to introduce the Bill. It enjoined on Government the desirability of not resorting to the power of refusing to cash bullion except in cases of necessity. That was precisely the course which the Government wished to take. The Bill was one simply of precaution and safety. It was not intended to withhold from the bullion trade the accommodation which it enjoyed; but at the same time it was not proposed to make any special concession to that trade. It was manifestly the duty and one of the functions of the Currency Department to take bullion in exchange for

Notes, when there was reasonable ground to suppose that the Notes so exchanged would go into circulation. It was not, however, the duty of the Currency Department to go on cashing bullion for the benefit of private individuals, and thus continue a course in no wise redounding to the benefit of the public.

There was one part of the resolution of the Chamber of Commerce to which he would now refer. They expressed a hope that the capacities of the Mints would be enlarged so as to enable them to deal with the great and growing importations of bullion. It would seem from that expression of opinion that the present powers of the Mints were supposed to be below par, and that sufficient energy had not been displayed by the Department in meeting the extended requirements of Indian commerce. That opinion, if it did exist, was altogether unfounded. He had provided himself with authentic information on the matter. The principal Mints had been considerably increased. A second Mint had been established at Bombay in the year 1864-65; the outturn of silver coinage had been doubled. If we compared the operations of our Mints with those of the Royal Mint in England, it would be found that we were greatly in excess, not only in capacity but outturn. That was not surprising, because the basis of currency in India and in England were totally different. The power needed to coin a million in gold was only one-tenth of what was needed to turn out a million in silver. As long as you maintained silver as the basis of your currency, there could practically be no means of enlarging the Mint Department so as to enable it to meet great and sudden influxes of specie.

At the same time, so far as its present powers were equal to the emergency, he could confidently say they would not be spared. He had made enquiries in the proper quarter. He had pressed upon those charged with the administration of the Department the necessity of using every exertion to enlarge the powers of the Mint; and he believed he might promise the Council that, large as that capacity now was, and great as the exertions of that Department had been, the capacity would be enlarged and the exertions increased.

He hoped that explanation would be sufficient to satisfy the Council that he was not hastily, and unnecessarily on the part of the Government, urging a greater departure from the provision of the Currency Act than was really called for. As he said before, the real difficulty lay in our having a currency based on silver and not on gold. The work of a Mint was to be estimated, not by the value of its outturn, but by the number of pieces of which that outturn consists. If you had to use ten times the labour and employ ten times the capacity than would otherwise be necessary, it was not

fair to charge the Mint with the inconvenience imposed on a person impatient to convert his bullion into coin.

He did not know whether any gentlemen present wished to make any observations. He should be happy to hear any comment which might be made, and with the short explanation he had now given, he would reserve any further observations for his reply to the remarks of Hon'ble Members, especially those connected with the mercantile community.

The Hon'ble MR. COWIE said that a fortnight ago he expressed in this Council his opinion of the reasonableness of this measure, and he had heard nothing since to make him change that opinion.

He had heard with pleasure the Right Hon'ble Member's promise of improvements to the working power of the Mints, though it was somewhat contradictory to the opinion he understood him to express that these large importations of silver were no such great benefit to general commerce. The flow of bullion to this country was, he (MR. COWIE) submitted, a real benefit, and whatever facilities could be given to the rapidity of its conversion would be an advantage to all.

The Hon'ble COLONEL DURAND observed that the Bill made no change in the negotiability of the certificates. He doubted therefore whether its effect would be as great as was anticipated by the Right Hon'ble gentleman; for so long as these certificates remained negotiable, the holders might apply to the Banks or Capitalists and obtain Government Notes, which would be taken to the Department of Issue, where they would at once be converted into coin, as at present. No doubt the Government would gain a few days; but the measure struck him as so moderate that it was likely to prove somewhat ineffective.

The Hon'ble MR. BULLEN said he was sorry to hear some observations which fell from the Right Hon'ble gentleman, which conveyed the impression that he entertained different opinions from those which had been expressed by the late Mr. Wilson as to the importance of making bullion available for the purposes of commerce as soon after importation as was possible, and which had led him to introduce into the Government Currency Bill a provision placing the Department of Issue on the same footing, in respect to the issue of Notes in exchange for bullion, as the Issue Department of the Bank of England. He of course admitted that the analogy between the two countries was not complete. In England, Notes sufficed for all purposes of internal trade, and it was only when bullion required to be sent abroad to correct the exchanges, that they were returned to the Bank to be exchanged for coin. In India, on the contrary, owing to the limited circulation which the Notes enjoyed, there was

a constant drain of coin into the interior. Still he could not quite agree with the Right Hon'ble gentleman when he said that the exchange of Notes for bullion was no proper part of the functions of the Issue Department. That the paramount consideration must be absolute security for the convertibility of the Note-circulation, he at once admitted, and to that the convenience and even the interest of the bullion importer must be entirely subservient. He thought that a great part of the opposition which was felt against this measure outside arose from the grounds on which the Right Hon'ble gentleman had justified it in his speech on that day fortnight. He had then stated that he put the necessity for this measure on no higher ground than that of the expense and inconvenience entailed on the Government by moving large sums of money from one Presidency to another. Of course the answer to that was, that the Government made a large annual profit out of the limit at the expense of the bullion importer. That profit amounted to nearly twenty lakhs a year. Again, the Government made a further large annual profit out of the interest on the Securities on which the reserve in the Currency Department was invested. This was another twenty lakhs, and, receiving that large profit, bullion importers argued, and as it seemed to him (MR. BULLEN) not unreasonably, that when the necessity occasionally arose of fortifying the reserve of bullion in the Issue Department at any one Presidency, the cost of doing so might fairly be undertaken by the Government. The Right Hon'ble gentleman had referred to the amount invested out of the currency reserves, and quoted the opinion held by Mr. Wilson that a reserve of one-third in coin was a sufficient reserve to keep in the Issue Department. No one charged the Government with having invested a larger proportion of the reserves than they were entitled by law to invest; but looking to the fact that a pressure for coin might have been expected to be felt at Bombay at this season of the year, he did think it exhibited a want of foresight on the part of the Executive Government, that with a circulation of under three crores, no less than 187 should have been invested in Securities. The Right Hon'ble gentleman had told them what he (MR. BULLEN) had been very glad to hear, that by certain alterations which it was proposed to carry out, the coinage capacity of the Calcutta Mint could be largely increased. He (MR. BULLEN) did not know if the coinage capacity of the Bombay Mint could be increased in the same manner; but he considered that if the Bill became law, it would be more than ever the duty of Government to provide a Mint-power capable of coping with the supplies of bullion which would continue to pour in.

His Excellency THE COMMANDER-IN-CHIEF said, "Sir, in answer to the last speaker, I would observe that the arguments in support of the measure have been placed so forcibly and clearly before the Council that but little would have remained to be said had not my Hon'ble friend, Mr. Bullen, transferred the matter

of the debate to new ground. Thus, Sir, he has directed an attack against the Executive Government, it matters not whether it be at Calcutta or Bombay, because of its alleged want of caution in meeting an unexpected drain on the Issue Department. It is no secret that a great run has taken place in Bombay on the Issue Department, and on the Bank of Deposit which does the Government business, and that extraordinary measures have been taken to ward off the impending danger. That brings me to the consideration as to whether my Hon'ble friend is right in his argument. Is he justified in saying that certain measures for the protection of the Financial Department have not been taken? Is he justified in attributing to bullion merchants the character of representatives of the commercial community? In answering these questions, it will be necessary to travel back to somewhat abstract doctrines, and to advert to certain principles of political economy. It is needless to say that bullion when imported into the country bears only the character of a commodity of trade. If an artificial stimulus is given to the dealers in this commodity, the result is an action on the market which is the cause of trouble, convulsion and panic. The same principles apply in the consideration of bullion as of any other commodity, as, for instance, corn. By the concession granted by Mr. Wilson,—that is to say, by the extraordinary privileges conferred on the bullion dealer—an artificial stimulus is given to the import of bullion. Mr. Wilson gave no reasons for the concession beyond saying that it would give merchants in India the same facilities as those enjoyed by merchants in London. When Mr. Wilson made that statement, he forgot the absolute difference in the relations of Indian merchants to India, and of English merchants to England. Thus, Sir, in England there is a thoroughly established Note-circulation, but in India it may be said that there is an absence of Note-circulation except in the Presidency Towns. I hold in my hand Returns which show that, in the outer Circles of Currency, this Note-circulation does not reach seven lakhs; whereas, in the Presidency Towns, it is seven and a half crores, or something more than double the amount of issue at the date that the old Banks of issue closed their operations in virtue of Mr. Wilson's reforms, and the issue became a State Department. The increase in the Presidency Towns then, in truth, only represents the great development of transactions of every description which has taken place since the date referred to. I am therefore justified in saying that the Note-circulation, although rather more than double in volume as compared with former times, has but little to say to any extension of it in the Provinces. It is evident, therefore, that there is a weakness in the notions which led Mr. Wilson when he gave his reason for the change. Thus, reasoning too closely from English analogy, he clearly supposed that, so soon as his currency notes had been received from the Issue Department in exchange for certificates, they would be

spread throughout the length and breadth of the land, and that coin would not be required in exchange for bullion. The precise converse has turned out to be the fact. When bullion arrives, the merchant demands that it should be immediately cashed in Notes—he takes the Notes to the Issue Department and demands coin. Therefore, a run sets in on the Issue Department and on the Bank of Deposit. Consequently, the measure before the Council cannot justly be called solely a measure for the convenience of Government in the Financial Department, but it is a popular measure to avert convulsion and panic by guarding the community against privileges to a special trade. Suppose the case of a run on the Issue Department. Telegrams arrive demanding assistance. The first thing which can be done is a direction to a Presidency Bank of Deposit to afford aid. But the Bank's powers are limited: it has no immediate facility for the transmission of material, that is to say, of coin, *per saltum*. There is no magic by which it can suddenly send an immense sum of money, say half a million. Such a Bank does what it can, that is, it will send bills—say to Bombay—for the amount. But the people in Bombay want money. Consequently, if they were to discount these bills, it would be to intensify the difficulty against which the aid is directed. But as they would not be unwise enough to do this, the bills are simply useless, and assume the form of credits in blank at a time when actual coin is wanted, a fictitious capital being thus created. Such blank credits, as Mr. Goschen tells us, are of use for bridging over the slack time of business between two countries engaged in trade. But they are absolutely useless when it is required to meet a sudden drain of specie. I have stated the difficulty which occurs when, we will say, the Bank of Calcutta attempts to reinforce the Bank of Deposit, a Government Bank, at Bombay, in aid of the Issue Department. Now let me state another case. Let us assume that a great drain has set in on the Issue Department. The constituents of the Bank of Deposit at the same time demand that all their drafts and cheques shall be cashed in specie. It may have a very large nominal balance, and yet the mass of it may be in Notes through no fault of the Bank. In the exercise of his undoubted right, the Chairman of the Bank asks to have half a million of Notes exchanged for specie. But what a state of things is it if the Issue Department is obliged to ask for time! The Bank of Deposit must go into the market and scrape up specie as it can, because the Issue Department cannot meet the demand. It is impossible to avoid such difficulties when ships are constantly arriving, each, perhaps, with a million of bullion, and the importers, under the existing law, at once demand and obtain specie. Thus in the importers' hands the bullion has the character of money, but directly it is transferred to the Bank or to the Issue Department, it loses that character, the resources of both, which ought to be at the disposal

of their ordinary constituents, being thus summarily diverted in favour of the bullion merchant, because in his hands the bullion is money, whereas it is not money so soon as it has left them. I maintain that such a state of things cannot fail to lead to convulsion. Sir, for the last five years I have been a Member of the Bombay Government, and every year the like difficulties have arisen at about the same time, and invariably from the same cause, namely, that which my Right Hon'ble friend now seeks to get rid of by the Bill under consideration. During that time we were more than once hastily summoned to Council to consider what could best be done to meet the crisis thus artificially caused. On one occasion we had recourse to strong measures which at first were not approved, but afterwards met with full sanction. This occurred about three years ago. I therefore now join issue with my Hon'ble friend. There is an inconsistency in the existing law against which no foresight can possibly provide. The Hon'ble gentleman's accusation directed against the Executive Government is not justified by facts. It should rather be directed against the false principle which has caused all these difficulties for the last five years.

"My Right Hon'ble friend, when considering the capacity of the Mints as compared with that of the Imperial Mint in England, remarked on the much greater facility afforded to the latter for producing large sums of coin, because the basis of the British currency is one of gold. This brings forcibly before me the discussion which took place nearly two years ago, whether gold should not be substituted in India for silver. The result of the discussion seemed to be tolerably conclusive, opinion in India having been very generally in its favour. That discussion originated in Bombay in consequence of the stringency of the local market, which proceeded from the cause forming the subject of the Bill. I think, but I speak without any authority, that there are some indications that the Right Hon'ble the Secretary of State would not be so indisposed to such a change as he was in 1861, when he expressed his views in a demi-official letter to Mr. Laing, which was answered by that gentleman in a Council Minute. It is not called for in this place, and it would not be respectful in me to subject the argument of the Right Hon'ble the Secretary of State to a rigid analysis; but I would earnestly commend those papers to the consideration of every Member of the Council and of the community outside. If read carefully, it will be seen that all that Mr. Laing had predicated of the existing state of things, and had prognosticated of the future, has turned out to be true. What he said of the restriction of the floating of Paper Currency in this country, and of the limitation of its use, has been proved by experience to be exactly correct. It is difficult to support an argument more strongly than by reverting to the prognostications of Mr. Laing which have been justified by the experience of four years. I have before said that opinion in India was generally in favour of the proposal which emanated from the Bombay Chamber of Com-

merce from two to three years ago. But all questions in this country seem to flag and to be treated in a dillettante way unless taken up by Government. The cause of a gold currency was not advocated in such a manner as to impress on the Secretary of State that the change was strongly desired. I hope that the Members of the Council, and that the commerce of the country represented by the great merchants of Calcutta and Bombay, will turn attention very seriously to this matter. The difficulty urged by the Hon'ble gentleman opposite with regard to the operation of the Bill does not reside in the objections which have been taken to it, but in the simple fact that India has a silver currency, whereas she has reached that point of development when her monetary wants demand a currency of gold. Silver is the currency of a comparatively poor country—gold is the currency of a rich one. During the last eight years we have seen the most extraordinary advance in the way of riches throughout India. This is evidenced in every manner possible, by the enormous increase of transactions in the great centres of trade, not only in the Presidency Towns, but in the Provinces also. It is shown by the opening of new communications in all directions and by the use made of them. The Post Office returns even display that the number of letters has almost doubled in the time mentioned. We are therefore justified in saying that we are witnessing the conversion of India from a state of poverty to a state of wealth, and that she must be treated accordingly. We have seen the like take place in France and in the United States. France fifty years ago was comparatively a poor country. She is now a rich one. Accordingly, though not quite fixed by law, she has absolutely adopted a gold currency, and the silver franc has become a *de facto* token-coin. The Americans have done the same, but they have been in one respect more logical than the French and more complete in their operations, that is to say, so soon as they were convinced that the substitution of gold for silver had been completed, they fixed the gold currency in law by reducing silver to a mere token-coinage, as we have done in England. I presume to say that India has now reached that point when it is incumbent on the Government and the community to cause that change to be introduced, which is required by the altered circumstances of the country. The remedies for the difficulty stated by my Hon'ble friend Mr. Bullen are to be sought, not in mechanical extensions of the Mints, not in attributing to the bullion merchant a power of declaring his bullion to be money when it is not money, but in the introduction of a gold currency. My Hon'ble and gallant friend Colonel Durand's remark that certificates would be liable to discount is perfectly just; but it is not apparent that any inconvenience can result from this. Such scrip-certificates will be discounted by the Banks or other private persons holding Notes. Those Notes were always liable to be converted into rupees, they being actually issued. This is very different

from the Issue Department uttering fresh Notes on account of bullion when those Notes would be returned immediately for coin."

The Right Hon'ble MR. MASSEY said, that he had listened with much interest to the discussion, and he had no reason to complain of the tone which the debate had assumed. His Hon'ble friend (Mr. Bullen), however, had made some remarks inculpatory of the policy of the Government, and seemed to think that there had been some laxity in the Department of Issue. He (MR. MASSEY) believed that there was no good reason to complain of any want of vigilance or energy in that Department. His Hon'ble friend was perfectly aware—he had himself pointed it out—of the essential difference between the Department of Issue in the Bank of England, and the Currency Circles in this country. The Bank of England consisted of two Departments—the Department of Issue and the Banking Department. These two Departments helped each other; and although it was obligatory on the Issue Department to take bullion, the Bank was not obliged to give cash for bullion; they purchased bullion at a price which represented the difference between cash and a bill payable at the time when the bullion could be converted into coin. Besides, the paper which they issued against bullion was so firmly and extensively established, that there was no apprehension that it would come back, except in ordinary course which could be calculated on to a nicety. Moreover, the Bank of England not only in its capacity of Bankers discounted bills, but also transacted the business of bullion merchants. A great part of the bullion paid into the Bank of England was sold to foreign merchants for the purpose of exportation. But the situation of the Currency Department here was totally different, and he could not but think that that provision from the Bank Charter Act of 1844 was improvidently imported into the Currency Act of India without those modifications which the difference between the two countries and the two establishments obviously suggested.

His Hon'ble friend the President of the Chamber of Commerce had said that the Currency Department was bound to undertake this business, because they derived profit from the circulation of Notes. Now His Excellency the Commander-in-Chief had well pointed out that there was no paper circulation in India, and indeed he could be well content to rest the defence of the Government, so far as its policy had been censured, upon the speech of his Hon'ble and gallant friend. There was only paper circulation in the Presidency Towns; but throughout the rest of India, Government Notes were, he was sorry to say, treated like commercial paper, and sold at a discount in the bazars. But supposing it was true that the Currency Department did derive profit from this source, the profits which they derived from investment, seigniorage, and circula-

tion were here, as in every other civilized country, profits retained not so much as a profit, but as a fund for defraying the expenses of the Department. They were obliged to keep up establishments for the issue and conversion of the paper. The expenses of those establishments must be defrayed from their profits. But suppose there was a large margin of profit, which he did not admit, after all the expenses incident to the currency had been defrayed, he still maintained that that margin was not the property of the bullion merchants, but of the public. His Hon'ble friend (Mr. Cowie) seemed to suppose that he (MR. MASSEY) did not attach much importance to the importation of bullion. If he had said anything to justify that observation, his words had been misapprehended, or he had failed in expressing himself intelligibly. He was quite aware that in India, where trade was expanding to a very great extent, it was necessary that that expansion should be sustained by the extension of the metallic basis. Therefore for the Government to throw any obstacles in the way of bullion importation, would be a blind and unwise policy. But there were limits to the extent to which they were bound to afford facilities to the introduction of this commodity, and he thought that by extending the Mint machinery, they would do all they could reasonably be expected to perform. He did not think that there was anything to justify the censure which had been passed on the Department of Issue, because he had shown that the capacity of one of the largest Mints had been doubled, and it was a fact that the employés in the Government Mints had been working night and day. So far from retaining bullion in store, the Mint had been frequently brought to a stand-still, because of the absence of bullion. When any sufficient quantity was in hand, the operations of the Mint were never suspended; but in cases of large importations, its capacity was sometimes taxed to a degree beyond any conceivable power.

The opinions of the late Mr. Wilson, one of the greatest financial authorities which this country had ever seen, had been quoted to-day as if his policy was being departed from. What was his policy? Mr. Wilson's original proposal was this. He thought, coming from England with his great experience of commercial affairs, and confident of the advantage which India would derive from the establishment of a Paper Currency, that this paper would permeate through the length and breadth of India, and be accepted as a convenient medium of exchange. Those expectations, however, had been disappointed. Estimating in the sanguine manner he did, Mr. Wilson thought it would be sufficient to retain in the Department of Issue only one-third of the Issue representing the circulation. When Mr. Wilson proposed to maintain that small reserve, he (MR. MASSEY) doubted if Mr. Wilson was prepared to appropriate that amount to the sudden demands of dealers in bullion.

According to that gentleman's calculation of the extent to which the currency notes would be established as a circulating medium, the Department of Issue would have no difficulty in meeting the ordinary demands of the bullion importation.

If Mr. Wilson were here now, and sitting in the place, the duties of which he had so ably discharged, he would not for a moment have concurred in the proposition that the Government was bound under all circumstances and at all times to provide funds in each of the principal Currency Circles against prompt demands on account of bullion. Such a proposition would be too wild and absurd to need serious refutation. Nothing of the kind had been urged by the gentleman who represented the commercial community in this Council, and he was gratified to find, on the whole, that those gentlemen were not adverse to the Bill.

The Right Hon'ble MR. MASSEY then applied to His Excellency the President to suspend the Rules for the Conduct of Business.

The PRESIDENT declared the Rules suspended.

The Right Hon'ble MR. MASSEY then moved that the Bill be taken into consideration.

The Hon'ble MR. BULLEN said that, before the question was put, he wished to point out the hardship which, if this Bill at once became law, would thereby be inflicted on those importers of bullion who, in reliance on the law as it stood, had entered into operations the result of which would be prejudiced by the proposed change. The Right Hon'ble gentleman proposed to suspend the Standing Orders and pass the Bill at once. He (MR. BULLEN) admitted that if the Executive Government declared the immediate passing of the measure absolutely necessary, opposition must cease, for the convertibility of the Note was of paramount consideration. But if no such necessity existed, he would appeal to the Right Hon'ble gentleman to suspend the operation of the Act, say for a month or six weeks, that those engaged in an important branch of trade might not be subjected to a loss which they could not have guarded themselves against.

The Right Hon'ble MR. MASSEY said, that he was very sorry he could not accede to the proposal of his Hon'ble friend. Merchants must be prepared for occasional changes in commercial legislation. It was a well established principle that no private member of the community had a *locus standi*, in the event of an alteration of law which affected his individual interests. In England, the Chancellor of the Exchequer has frequent occasion to propose

alterations in the tariff or excise. He often takes off a duty affecting a commodity of which there may be a large stock in hand. The owners wait upon him and ask a drawback. He declines with a smile of dissent, and they meet with no support from public opinion. When the Chancellor of the Exchequer makes his annual Financial Statement, the public is informed for the first time of what he is going to do. He announces perhaps that he is going to take off a tax that affects stocks in hand; he asks the immediate assent of the House of Commons; they give it, and the moment the resolution is passed, the financial operation takes effect. The course which he (MR. MASSEY) now proposed to take was analogous to that. As he said before, he did not wish to raise a false alarm that the Government would be in any danger of insolvency by continuing the practice which the present Bill proposed to alter; but their experience of the inconvenience and injurious nature of the practice was sufficient also to warrant his hope that the Council would consent to allow the present measure to become law.

The Hon'ble MR. BULLEN said that his proposition was not without precedent. In the last session, an alteration was made in the tea-duties, which was intended to have immediate effect, but on a representation from parties interested in the trade, that great loss would be inflicted upon them, the Chancellor of the Exchequer agreed to the change in the law taking effect only after an interval of (he believed) a month or six weeks.

The Right Hon'ble MR. MASSEY said that was quite an exceptional proceeding. What particular reason there was which induced the Chancellor of the Exchequer to act as he did, he (MR. MASSEY) was unable to say. There was no doubt some good reason. The case of the importers of bullion was not nearly so strong as that of merchants holding large stocks of an article like tea, on which there was a small margin of profit. Here the bullion was brought out to purchase property for which there was an extraordinary and peremptory demand. It was just possible that the importers might lose something by a slight turn of the market, but if they took their certificates to the Banks, they would have no difficulty in getting the requisite accommodation on easy terms.

The Motion was put and agreed to.

The Right Hon'ble MR. MASSEY then moved that the Bill be passed.

The Motion was put and agreed to.

The following Select Committees were named—

On the Bill to provide a summary procedure on Bills of Exchange and to amend, in certain respects, the Commercial Law of British India—The Hon'ble

Mr. Bullen, the Hon'ble Rájá Sáhib Dyál Bahádur, the Hon'ble Messrs. Cowie, Gordon and the Mover.

On the Bill to enlarge the jurisdiction of the Courts of Requests in the Settlement of Prince of Wales' Island, Singapore and Malacca—The Hon'ble Messrs. Grey, Taylor, Gordon and the Mover.

The Council adjourned till the 12th January.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Dept. (*Legislative*).

CALCUTTA,
The 5th January 1866.

Govt Central Press—No 125 L D—16-11-80.—50

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Government House on Friday, the 12th January 1866.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Honour the Lieutenant-Governor of Bengal.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble G. Noble Taylor.
The Hon'ble Colonel H. M. Durand, C.B.
The Hon'ble J. N. Bullen.
The Hon'ble Mahárájá Vijayaráma Gajapati Ráj Bahádur of Vizianagram.
The Hon'ble Rájá Sáhib Dyál Bahádur.
The Hon'ble W. Muir.
The Hon'ble D. Cowie.
The Hon'ble Stewart St. John Gordon.

RURAL POLICE ACT AMENDMENT BILL.

The Hon'ble MR. MUIR moved that the Report of the Select Committee on the Bill to amend Act No. II of 1865 (to provide for the maintenance of the Rural Police in the Territories under the government of the Lieutenant-Governor of the North-Western Provinces and elsewhere) be taken into consideration. He said that he had had the honour to present the Report of the Select Committee last Friday, and he then explained the slight alteration which had been made by the Committee in the Bill, in order to provide for the careful exercise of the authority conferred by the Bill. As the Report had now been in the hands of Members for a week, he begged to move that it be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. MUIR also moved that the Bill as amended be passed.

The Motion was put and agreed to.

INDIAN RAILWAYS' ACT AMENDMENT BILL.

The Hon'ble MR. TAYLOR introduced the Bill to amend Act No. XVIII of 1854 (relating to Railways in India), and moved that it be referred to a Select Committee with instructions to report in six weeks. He said that a few weeks ago, when he had asked for leave to introduce a Bill to amend the law relating

to Railways in India, he explained in general terms the object of the measure. The Bill now introduced accordingly repealed and re-enacted, with the necessary alterations and additions, the previous legislation on the subject as contained in Act No. XVIII of 1854 and the amending Act No. LII of 1860. The only two alterations of any importance were those which provided for a more extended application of Railway law. Thus, Act XVIII of 1854 applied only to Railways working under the control of Government; whereas the present Bill included all Indian Railways and Tramways, whether under the control of Government or not, whether guaranteed or not, and whether opened or not for public traffic. Then, again, the Act applied only to the Territories in the possession and under the government of the East India Company; whereas the Bill comprehended not only the Territories vested in Her Majesty under the Act for the better Government of India, but also, so far as regarded British subjects, the dominions of all allied Princes and States in the East Indies.

The additions to the present law were more numerous. It was not necessary that he should refer to them all, as they were noticed at some length in the Statement of Objects and Reasons which would be published with the Bill. He might state in a general way that the most important additions would be found in the Sections which were comprised in Nos. IV to VII of the Parts into which it had been found convenient to divide the Bill, and which contained regulations for the protection of the Company, those which were binding on the Company and its Officers, and rules for convictions and fines to be levied under the Act.

These Sections provided, among other things, that the Local Government might appoint Inspectors of Railways and imposed penalties for obstructing such Inspectors in the performance of their duties. Notice was to be given to Government before a line could be opened, and the Local Government was empowered to postpone such opening, or to close any part of an opened line, until the public safety was adequately provided for. Companies were required to erect and maintain gates at level crossings, and to fence dangerous quarries and ballast-pits, to receive and forward traffic without unreasonable delay and without partiality, and to report deaths and accidents both to the Police and to Government immediately after their occurrence.

Then as to fines and convictions, the liability of a Railway Company's servant was defined in respect of a fine imposed on the Company in consequence of his neglect; the prosecution of such servants and Officers under the Bill was provided for, and also the apportionment of such fines between them when an offence had been jointly committed.

The Companies were also empowered to make and publish bye-laws for the better regulation of the use of the Railways.

Such were the chief additions incorporated with the old Acts into the present Bill. They were all of a character to promote the real efficiency of

Railway control and management, and were such as appeared to be absolutely indispensable for the safety and convenience of the public. They were borrowed for the most part from English Railway Statutes; and it was obvious that, whatever provisions and penalties were found to be necessary in England to guard the interests of the public and to fix responsibility for offences committed by Railway employés, such provisions and penalties were at least as much required in this country, where the controlling Direction was far removed from the Executive, where the tendency to indifference and neglect was generally much stronger and the check of public opinion was far weaker.

He did not himself believe there was any general desire on the part of the Agencies in India to escape from a healthy Government control—a control which was in on way intended to diminish their authority or their responsibility for the conduct of the Railway, but on the contrary to assist them in maintaining order and discipline among their staff, by providing for the infliction of proper penalties for offences against the law.

He made these remarks, because within the last few days a somewhat strong representation had been received through the Government of Bombay, from the Agents of the two leading Railways in that Presidency, protesting against certian amendments of the existing proposed law, as regarded especially the question of fines and prosecutions for offences committed by Railway Officials. He was desirous of correcting the misapprehension under which those gentlemen were evidently labouring when their protest was written, and which might possibly be shared by other Railway Agents. These objections, he might explain, were directed, not against any of the provisions of the present Bill, which had not yet been published, and which consequently was not in the hands of the Bombay Railway Agents when they wrote, but against certain suggestions from the several Local Governments, embodied in a Resolution of the Government of India, which seemed to have been communicated to them, but which was forwarded for consideration in the Legislative Department with a view to the adoption in the Bill of such of the suggestions as might be practicable and expedient. Those gentlemen would perceive, when the Bill was published in the usual course, that the suggested measures to which they specially objected, found for the most part no place in the present Bill.

Now, however necessary and desirable it might be for the public interests to place the Indian Railway Law on a sounder and more practical footing than was the case at present, he could assure the Council and all the Railway Authorities concerned that there was no disposition on the part of the Government to enact or enforce provisions which were of a character calculated to degrade the position of the Officers of the Companies in India, or to impose upon them responsibilities or penalties which were too stringent or oppressive

in their nature, and, further, there was no intention whatever to press the present Bill through any of its stages. Opportunity would be given for the fullest and freest discussion ; the opinions and views of all the Officers at the head of the various Railways would be obtained, and if necessary the London Boards of the different Companies would be consulted before the Bill became law.

The Motion was put and agreed to.

BURMESE RECORDERS COURTS' ACT AMENDMENT BILL.

The Hon'ble MR. MAINE introduced the Bill to amend Act No. XXI of 1863 (to constitute Recorders Courts for the Towns of Akyab, Rangoon, and Moulmein in British Burmah, and to establish Courts of Small Causes in the said Towns), and moved that it be referred to a Select Committee, with instructions to report in one month. He said that this was a Bill which had been published by their late Colleague (Mr. Harington) with His Excellency's permission, and bore Mr. Harrington's name upon the back. The Act which it professed to amend, Act XXI of 1863, provided for the constitution of Recorders' Courts for the Towns of Akyab, Rangoon, and Moulmein in British Burmah and admitted of the appointment of a Recorder for each of those Courts. But in the commencement of these new Courts in British Burmah, His Excellency in Council had thought fit to suspend the establishment of the Recorder's Court at Akyab and to appoint only one Recorder for the two Courts of Rangoon and Moulmein. Now the facts, he believed, had justified His Excellency's caution, because, from information which had recently reached him (MR. MAINE), he was inclined to think that the united business of the two Courts did not suffice, or at all events did not more than suffice, to fill up the time of a single Recorder. But there were some inconveniences in having but one Recorder for two Courts. He could not be in two places at the same time, and therefore, as Mr. Harington had said in his Statement of Objects and Reasons :—

" Although a Recorder's Court has been established under Act XXI of 1863 at Moulmein as well as at Rangoon, there is only one Recorder for both Courts, and during the time that he is engaged in holding sittings at one of these places, there is no person present in the Court at the other place who has power to make the interlocutory orders which are occasionally required in a suit ; and the consequence is that very serious inconvenience often ensues, which in some cases amounts to positive injustice, and causes very serious loss or injury to the parties. "

And then Mr. Harington went on to say :—

" The present Bill proposes to supply this defect by empowering the Registrar of each Court, who is always on the spot, to make orders for arrest or attachment of property before judgment, for the protection and management, during litigation, of property in dispute, and for injunctions restraining breaches of contract or wrongul acts."

The Council would understand that the Registrar was a permanent Officer always on the spot, and that he was an Officer of some responsibility, for

in the original Act (XXI of 1863) he was empowered to exercise the functions of a Small Cause Court Judge in suits not exceeding in amount or value 200 Rupees; and His Excellency in Council had the power to give him higher powers as a Small Cause Court Judge to a considerably larger amount.

The only Section of the Bill, beyond those which were merely technical and intended to carry out the object in view, was that which provided for an acting Recorder being occasionally appointed in British Burmah. The Act to be amended merely said that, when the Recorder was absent, the Commissioner of the Town should act as Recorder. That was very well so far as occasional brief absence went. But when a permanent Recorder had taken fifteen months' leave, of course it was not to be expected that the Commissioner should assume his functions during his absence to the detriment of his own proper duties. The residents were also entitled to expect that the acting Recorder should have the same qualifications as the permanent Recorder. His Excellency in Council had got over the difficulty in the present case by declaring the Office of the Recorder to be vacant, and by appointing a new Recorder on the understanding that his appointment would be recalled on the return of the former Recorder.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill to amend Act No. XVII of 1854 (relating to Railways in India)—His Honour the Lieutenant-Governor, the Hon'ble Messrs. Maine, Bullen, Cowie, Gordon and the Mover.

On the Bill to amend Act No. XXI of 1865 (to constitute Recorders' Courts for the Towns of Akyab, Rangoon, and Moulmein in British Burmah, and to establish Courts of Small Causes in the said Towns)—The Hon'ble Messrs. Grey, Taylor, Gordon and the Mover.

The Council adjourned till the 19th January.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Dept. (Legislative.)

CALCUTTA,
The 12th January 1866.

Government of India Central Printing Office—No. 5 L. D.—21-6-1900.—80—JosC.

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Government House on Friday, the 19th January 1866.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding.*
His Excellency the Commander-in-Chief.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble Colonel H. M. Durand, C.B.
The Hon'ble J. N. Bullen.
The Hon'ble Mahárájá Vijayaráma Gajapati Ráj Bahádur of Vizianagram.
The Hon'ble Rájá Sáhib Dyál Bahádur.
The Hon'ble W. Muir.
The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.
The Hon'ble D. Cowie.

RE-MARRIAGE OF NATIVE CONVERTS' BILL.

The Hon'ble MR. MAINE presented the Report of the Select Committee on the Bill to legalize, under certain circumstances, the Re-marriage of Native Converts to Christianity.

BURMESE RECORDERS' COURTS ACT AMENDMENT BILL.

The Hon'ble Mr. MAINE presented the Report of the Select Committee on the Bill to amend Act No. XXI of 1863 (to constitute Recorders' Courts for the Towns of Akyab, Rangoon, and Moulmein in British Burmah, and to establish Courts of Small Causes in the said towns).

CURRENCY ACT AMENDMENT ACT.

His Excellency the COMMANDER-IN-CHIEF asked permission to be allowed to correct an error into which he fell in the debate on the Currency Act Amendment Bill. He had stated in the course of his argument that the Note Circulation in the outer Circles did not reach seven lakhs of rupees. It was shown by the return, which he imagined himself to be quoting correctly, that the Notes at the several circles of Allahabad, Lahore, Nagpore, Kurrachee, Calicut, Trichinopoly, and Vizagapatam did in fact exceed a crore of rupees. He fell into his mistake in consequence of having misread a column of figures, and further from his disuse of the denomination of pounds sterling; in short he mistook a return made out in pounds for one made out rupees. He did not think,

in the face of the fact stated by the Right Hon'ble Mr. Massey in the course of the debate, and of the alleged specie circulation of 100 millions of money in India, that the argument maintained by his Right Hon'ble friend or himself was at all affected by the fact of whether the circulation referred to was ten lakhs or a crore of rupees, as in either case it was utterly disproportionate to the means of a proper local circulation of 150 millions of people. But his statement having been made publicly on the authority of the return, it was right that it should be corrected as publicly. He would further suggest that the return should be printed in the abstract of the proceedings of to-day.

Note Circulation.

	Authorized Issues of the three Chartered Banks of India before the passing of Act IX of 1861.	Actual Issues.	28th December 1865. Government Currency Notes		
	£	£	£		
			a.	*a.* Calcutta Circle ..	3,138,981
				Allahabad B. C. ...	297,312
Bank of Bengal ...	2,000,000	1,964,000	4,074,427	Lahore B. C. ...	461,057
				Nagpore B. C. ...	177,077
					4,074,427
			b.	*b.* Bombay Circle ...	2,673,500
Bombay	2,000,000	1,087,000	2,788,362	Kurrachee B C. ...	114,862
					2,788,362
			c.	*c.* Madras Circle ...	550,000
Madras	1,000,000	266,000	665,646	Calicut B. C. ...	35,146
				Trichinopoly B C. ...	41,514
				Vizagapatam B. C. ...	38,986
					665,646
As per Mr. Laing's Minute on the Currency Bill .	5,000,000	3,317,000	7,528,435		
	Deduct Notes of other Circles cashed at Calcutta, Madras, and Bombay ...		78,099		
			7,450,336		

The Council adjourned till the 26th January.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

CALCUTTA,
The 19th January 1866.

Government of India Central Printing Office.—No. 159 L. D.—29.10-9.—50.

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Government House on Friday, the 26th January 1866.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding*.
His Honour the Lieutenant-Governor of Bengal.
His Excellency the Commander-in-Chief.
The Hon'ble H. Sumner Maine
The Hon'ble W Grey.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Colonel H. M. Durand, C. B.
The Hon'ble Mahárájá Vijayaráma Gajapati Ráj Bahádur of Vizianagram.
The Hon'ble Rájá Sáhib Dyál Bahádur.
The Hon'ble W. Muir.
The Hon'ble D Cowie.
The Hon'ble Stewart St. John Gordon.

REGISTRATION ACT AMENDMENT BILL.

The Hon'ble MR. GORDON introduced the Bill to amend Act No. XVI of 1864 (to provide for the Registration of Assurances), and moved that it be referred to a Select Committee, with instructions to report in six weeks. He said that the Bill which he had the honour to lay before the Council did not propose to make any very important alterations in the existing law. The causes which had led to the revision of the Act now in force were the doubts which had been entertained regarding the meaning of some of the most important provisions of the Act, and the difficulties which had been experienced in working the machinery of registration.

In the form of the Act some changes were proposed, but only with a view to render the law more intelligible to the public. All the information which a man about to register a document would be likely to require, was collected under separate headings, thus;—

What documents are registrable; and of these—when the registration is compulsory and when only optional:

The place where documents must be registered:

The time within which they must be presented:

The persons by whom they may be presented:

How the attendance of persons whose presence is essential to registration could be enforced:

The effect of registration:

And, in case of refusal to register, the remedy for such refusal.

At present much of this information could only be gathered after close study of the whole of the Sections of the Act.

The most important alteration of all, and that which had caused the necessity for the revision of the law, had regard to the presentation of documents for registration. The framers of the original law had made use of the word party, sometimes in its legal and technical sense, and sometimes in its colloquial sense, until it was difficult to understand what the effect of the law really was. After a good deal of hesitation, the established interpretation was that the persons who executed the document could alone present it for registration. In some respects this course possessed an advantage. If the man who executed the document appeared before the Registering Officer and said, "Register this document. I executed it. I have borrowed the money. I have rented this house"—then the Registering Officer could proceed to register at once, for no better evidence could be procured. But it was obvious, that the person who executed a document was the last person who would take trouble or incur expense in order to cause it to be registered; and, moreover, he never had possession of the document. Then it might be said, that it was in the power of the person who lent the money to say to the person who came to borrow.—"Execute the bond now—then go and get it registered—and when you come back with the bond duly registered, then you shall have the money." This was in fact what was now taking place. But the evil of it was that it created the necessity for two transactions instead of one. There must be the execution of the document—then there must be a separate transaction for the payment of the consideration money. The practice in the Mofussil was generally this. The man who wanted to buy a field, say, went to the seller: he took two friends with him: the terms of the bargain were discussed and settled; then the scribe of the village was sent for, and the whole was reduced to writing, and the witnesses who attested the signature of the executing person were witnesses also of the payment of the consideration money. One of the commonest pleas in Civil suits in the country was this: the execution of the document was admitted, but the payment of the consideration was denied, But under the practice which had hitherto obtained, the same witnesses who

proved the document proved also the payment of the consideration money, If however the law had the effect of dividing the transaction into two separate parts, the difficulty of arriving at a correct decision would be greatly increased. The Bill proposed that documents might be presented either by the persons who executed them, or by the persons who claimed under them, but registration could not take place unless the persons who executed them admitted that they had done so.

The next point to which he would refer was an entirely new provision. It was this. When through unavoidable accident a document had not been presented within the two or four months prescribed by the law, then the Registrar might accept it up to six months on the payment of a penalty. The Bill proposed to vest this discretion in the Registrar, who was generally the Collector or Judge, or always an officer of considerable experience. The law was very stringent as it now stood. However genuine the document might be, and however anxious all the parties to it might be to have it registered, still it could not be registered if the time for registration had expired. This was frequently the cause of great hardship. The effect of non-registration was very much the same as the effect of writing a document on unstamped paper. In both cases, the effect was to render it not receivable in evidence in the Civil Courts. This of itself was an evil of considerable magnitude, and if proper precautions were taken that none but *bonâ fide* documents were registered, the more that could be done to facilitate registration, the better. The proposal was in fact to adopt the procedure enacted for the same purpose in the Stamp Law. From enquiries which he had made in the Presidency towns, it seemed as if the hindrances to registration must be considerable; for in Calcutta only 2,292 documents had been registered during the past year, and in Bombay only 2,644. The details of the registration in Calcutta showed that, of the whole number registered, 1,686 were documents the registration of which was compulsory, and 606 optional; rather more than one-half were in English.

The Bill proposed to alter the law as to the remedy for refusal to register. At present the law laid down that the Registering Officer should not be a party to the suit to compel registration: the result of this was that the parties to the document, other than the plaintiff, were sued. But it often happened that they had no objection to registration taking place. The fact often was that registration was refused by the Registering Officer because the requirements of the law had not been complied with. But there was no one whose interest it was to press this on the notice of the Court, and the result was that in some cases orders had been issued by the Courts compelling registration when the provisions of the law had not been obeyed. The Bill proposed to remedy this by permitting the Registrar to be made a party to the suit. He would thus have an

opportunity of defending his acts. Another Section proposed to protect him from damages and loss when his acts were shown to have been done *bonâ fide*.

The position of the Registrar of the District was somewhat altered by the Bill. As the law now stood the Registrar was compelled to register all documents which referred to property situated partly in one District and partly in another. Now in a great part of India the Registrar of the District was the Collector, and his duties required him to travel about a great deal. This enabled him to exercise a useful supervision over his subordinate Sub-Registrars, but it made the actual work of registration very inconvenient. The Bill proposed to relieve him of all original registration except in the case of Wills and authorities to adopt, which were not numerous.

The object in view in the alteration in the mechanical part of the Bill was to get rid of the present system of making copies of copies. According to one Section of the present law, it was possible that a document might be produced in Court which was the fifth in descent from the original. Each copy was not unlikely to contain clerical errors, which would again be perpetuated and multiplied in each fresh series of copies. Moreover, the present system rendered it necessary to maintain larger establishments than were absolutely necessary.

As the law now stood, the seal and signature of the Registering Officer were *primâ facie* proof that the document had been duly registered. This was all that could be reasonably expected, but it left an opening for the opposite party to prove that the Registrar had not been duly appointed, or that his procedure had been illegal. It was hard that people should suffer for faults which they had not committed, and the Bill contained a proviso that no registration should be set aside in consequence of any such technical defects.

One of the great difficulties which was experienced in the administration of this country was the great number of vernacular languages. In Bombay there were no less than six; and in Madras he believed there were as many. The law said that when a document was presentd to the Registrar, written in a language which he did not understand, he should refer it to his superior. Now the chances were that the superior did not know more languages than the subordinate; it was hard that the law should make a man travel about, and thus lose more time than was necessary. The Bill accordingly proposed that when a document was presented in a language not understood by the Registrar, it should be accompanied by a translation and a copy; and that the copy should be filed, and the translation should, for the purpose of making the other copies and the abstracts required by the Bill, be treated as if it were the original. A further provision laid down that the Local Government should decide what languages were to be recognized.

There was one subject not dealt with in the Bill, regarding which he thought a few words ought to be said. Certain gentlemen connected with the cultivation of Indigo in the District of Jounpoor in the North-West Provinces had represented that the Act bore hardly on them. Enquiries had been made in the Lower Provinces, and it appeared that the same system of cultivation prevailed in the District of Shahabad, and partly also in the District of Sarun. That system was this. The Planter took of land, field by field, from individual cultivators. The conditions were that he should gather two crops, but the last crop could not be gathered in within twelve months: therefore the least was, though nominally for one year, in reality for about fifteen months. The Act made registration compulsory in these cases, and the Bill did not propose to alter the law in this respect. These gentlemen in stating their case laid great stress on the expense of registration and on the difficulty of inducing the cultivators to take the trouble of attending at the Registration Office. And they pointed out that they themselves were not authorized to present the lease for registration. The Bill proposed to authorize the person claiming under a document to present it for registration. And it also provided a procedure for compelling the attendance of the persons whose presence was necessary to registration. As to the question of expense, the fee on the registration of leases could be altered by the Executive Government, and he thought it had been reduced.

But if any alteration were about to be proposed in the main features of the existing law—if the list of documents, the registration of which was now optional or compulsory, was to be revised—he thought that alteration ought to take place in quite a different direction from that desired by these gentlemen. When alteration of this nature took place, he hoped it would be to make the registration of all documents relating to immovable property compulsory, rather than to increase the number of those the registration of which was now optional.

There was no doubt that the line drawn by the present law was very arbitrary It was quite possible for a man to evade the law altogether by dividing his estate into small lots of less than Rs. 100 in value each, and then the public would lose the advantage of being able to inspect the register of titles. So again the registration of a deed of sale of a piece of land valued at less than Rs. 100 was optional, but a lease of the same piece of land for thirteen months must be registered

The Bill had been framed after communication with the Registrars General of Madras and Bombay and of the North-West Provinces, and he (MR. GORDON) desired to express the great obligation which he was under to Mr. Heeley, the able and energetic Registrar General of Bengal.

Most of the alterations to be found in the Bill now before the Council had been suggested by difficulties which had occurred in the practical working of the present Act.

The Hon'ble the MAHÁRÁJÁ OF VIZIANAGRAM thought that there was one portion of the Bill which would probably not be well received by the Mahomedan community of Bengal. He referred to Section 21, which provided that "If any document tendered for registration be in a language which the Registering Officer does not understand, and which is not commonly used in the District, he shall refuse to register the document, unless it be accompanied by a copy and a translation into a language commonly used in the District; and such translation shall be registered and such copy shall be filed in his Office." Now there were very many instruments of importance, such as deeds of marriage settlement, dower, religious endowments, &c., which were drawn up, amongst the Mahomedans of Bengal, in the Persian language, of which a translation into the language commonly used in the District —*viz.*, Bengáli, might fail to convey the precise meaning of the conditions, &c., of the instruments in question. It would be obvious to his Hon'ble Colleagues, that such a measure would be productive of considerable inconvenience to parties, by leaving open a door to litigation, and of which advantage might be taken by interested individuals. He would therefore beg that the question be referred to the Select Committee for consideration, and for making such alterations in that Section, as might appear to them likely to obviate the evil pointed out.

The Hon'ble MR. MAINE said that with regard to presentation of a document in a language unknown to the Registering Officer, the provision contained in the Bill was in case of the person presenting the document. As the law now stood, he was put to considerable trouble in taking the document to another Registering Officer; but the Bill provided that if he tendered a copy and translation, the copy should be filed and the translation registered. The provision was therefore obviously in his favour.

The Hon'ble COLONEL DURAND said that great weight should be given to the remark of the Mahárájá of Vizianagram, because in all these languages it was often exceedingly difficult to give correct equivalents. The Mahárájá had specially drawn attention to Mahomedan documents; to these his remark did apply particularly. There were many obscurities and peculiarities connected with the various social matters to which such documents often referred, and it would be exceedingly difficult really to produce equivalents in any of the vernacular languages of India for the terms relating to such matters. He (COLONEL DURAND) would therefore recommend careful attention to what had fallen from the Mahárájá.

If he understood the mover aright, the Bill provided that the translation was to have the same force and the same validity as the original. If so, the provision required very serious consideration.

The Hon'ble MR. GORDON said that the Bill proposed that the copy should be filed and the translation registered. Therefore any body who could understand the language would find from the copy exactly what he required. It was only for the purpose of making the copies and abstracts required by the other parts of the Bill that the translation would be treated as if it were the original.

The Hon'ble COLONEL DURAND said that he might have misunderstood the Hon'ble Member. He understood him to say that copies might be taken in the original or in one of the vernacular languages, and that a copy taken in the vernacular would be of equal value with the original.

The Hon'ble MR. MAINE explained that what was filed was a copy of the document in the language in which it was drawn up, but the person filing it, at the same time, tendered a translation, which amounted in fact to putting his own construction on the copy.

The Motion was put and agreed to.

BURMESE RECORDERS' COURTS ACT AMENDMENT BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill to amend Act No. XXI of 1863 (to constitute Recorders' Courts for the Towns of Akyab, Rangoon, and Moulmein in British Burmah, and to establish Courts of Small Causes in the said Towns), be taken into consideration. He said that, as regarded so much of the Bill as he had explained and described when he asked the Council to refer it to the Select Committee, no amendment whatsoever was proposed, but since the Bill had been before the Committee, they had had the advantage of consulting Mr. J. Pitt Kennedy, the Recorder of Rangoon and Moulmein, and he had suggested the addition of three Sections, the desirability of which was so obvious that he believed the Council could not refuse to pass them.

Section 12 (the first of the new Sections) provided that the Registrar's powers as a Small Cause Court Judge should be exerciseable by the Recorder. Under the Act the Registrar had, up to a certain amount, the powers of a Small Cause Court Judge. It might well happen that the Registrar's file would be overfull, while the file of the Recorder was not full enough. It was clear therefore that, under such circumstances, the superior Judge should have power to take a case off the file of his subordinate Judge and try it himself.

Section 13 merely corresponded with a Section in the unamended Bill, which provided for the appointment of an Acting Recorder in the absence of the permanent Recorder. Section 13 made similar provision in regard to an Officiating Registrar, and empowered the Recorder, or, in his absence, the Commissioner of the Division, to appoint an Officiating Registrar, who might hold at the same time any other office under Government.

Section 14 empowered the Recorder to make rules of practice and prescribe forms. Such rules and forms must be published in the official Gazette, must be consistent with the Code of Civil Procedure, and must receive the sanction of the Chief Commissioner. The Section closely resembled one in the Punjab Chief Court Act.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

ARMS' ACT CONTINUANCE BILL.

The Hon'ble MR. MAINE, in moving for leave to introduce a Bill to continue Act No. XXXI of 1860 (relating to the manufacture, importation, and sale of arms and ammunition, and for regulating the right to keep and use the same, and to give power of disarming in certain cases) and for other purposes, said that the Act which he proposed to continue—Act XXXI of 1860, commonly known as the Arms' Act—was limited by its last Section to a duration of five years. As the expiration of that period approached, although His Excellency in Council, as Mr. Maine believed, had little or no doubt of the expediency, or indeed the absolute necessity, of continuing the measure, nevertheless, in deference to the hesitation implied in the restriction imposed by the former Legislative Council, the Government had thought fit to institute an enquiry, throughout India as to the operation of the Act, and, pending that enquiry, the Act had been continued for a single year which would end next October. The branches of the enquiry—this would be found in a letter from the Home Secretary addressed to all Governments and Administrations, which would shortly be circulated—were three. First, it was asked generally whether the Act had worked well and ought to be continued. Next,—and this question was suggested by the uneasiness known to prevail when the measure was originally under discussion—it was enquired what had been the working of the Act with regard to European British subjects. Thirdly, in consequence of reports which had recently reached the Government, it was asked whether the disarming of the country had encouraged the multiplication of wild animals. To take the second question first: there was a unanimity of testimony that no

European and no Native of approved loyalty had been disarmed under the Act. The rule of exemption, which, he supposed, might be regarded as typical of the rules in force throughout India, ran thus in the Central Provinces:

Every European or East Indian or Parsee or Soldier or Officer of any Department in the service of Her Majesty is exempted from the operation of Rule IX. Natives of rank with their retainers, and Natives of eminent loyalty and respectability may be similarly exempted by special order of the Chief Commissioner.

In reply to the first enquiry, there was also no variation in the answers from a statement that the Act had worked excellently; and, indeed, in some of the answers there might be traced a feeling of surprise that the question was asked whether it should be continued. Some of the papers bearing on the point were highly interesting. Most people would admit that the habitual carrying of arms, except for the purposes of sport, was a mark of barbarism. But it could scarcely have been predicted that so much softening of manners, and consequent advance in civilization, would be produced by the mere prohibition to carry arms. It was not too much to say that this measure had altered and mitigated the character of crime over a great part of India. He would read some passages from the papers in his hand.

The Commissioner of the Nagpore Division reported that the Act appears to have worked well in his Division. Considers that the powers which the Arms' Act confers are of great use in checking crimes of violence, and tend much to keep the people of the country quiet.

The Commissioner of the Nerbudda Division also stated, that the Arms' Act appears to have worked well enough in his Division. Few arms are carried without license. The provisions of the Act are believed to have a good tendency, in making those who might at times use arms for bad purposes in affrays, &c., forget their use. Is of opinion that the power to disarm is useful, and should probably be retained.

The Secretary to the North-West Government wrote as follows:—

It will be observed that the Officers consulted are unanimous in the opinion that the Act has worked well. The Inspector General of Police and other Officers report that its operation has been beneficial in checking aggravated affrays and such like outrages, and all approve of its continuance.

And one of the Commissioners of the same Provinces added—

"Some of the Magistrates have expatiated on the almost total cessation of the aggravations which used to accompany, and of the acts of violence which used to be the crimes of former days, before the people were disarmed; and there is no doubt that the change has been most marked and a most desirable one; and some of the Magistrates assert that it is fully appreciated by all the well-disposed."

The Commissioner of the Allahabad Division made some striking remarks—

The Native population have, I think, quite fallen into the way of thinking that lethal weapons are not necessarily essential accompaniments in the daily avocations of life: and I am quite convinced that their absence has led to a dimiuntion of the more heinous modes of personal attack. Independent, therefore, of the object with which the Act emanated, I am of opinion that its promulgation has indirectly tended to much benefit in the removal of the means by which outrages were committed either in the heat of quarrel or in more deliberate revenge; and, under this impression, I would earnestly advocate a continuance of the Act.

The following passage was from the report of the Magistrate of Humeerpore :—

In this respect the habits of the people have undergone a marked change; they pursue their ordinary avocations and frequent places of public resort, and also journey from village to village without preferring requests for permission to carry arms ; in fact, for the most part they acknowledge that the necessity for such action does not now exist.

From Jhansi the Deputy Commissioner wrote :—

With reference to Circular No. 8A of 1865, dated the 27th ultimo, calling for report on the general working of Act XXXI of 1860, I beg to remark that I consider the Act has worked well towards the repression of crime, in bringing about a general disarming of the population, thereby causing more settled and peaceful habits among the inhabitants, who now feel that a strong Government is a better protection for person and property than any amount of weapons carried by the individual.

Lastly, Mr. Maine would quote a passage from the Commissioner of Patna :—

"Some months ago, however, it was brought to my notice that a number of cases of wounding with lethal weapons had occurred in Patna, and this led me to make more stringent use of the provisions of the Act. There are a large number of *budmashes* in Patna, who have no regular means of livelihood, but simply attach themselves as servants of gambling-house-keepers or women of the town. These men are in the habit of wearing arms, and, on the occasion of quarrels arising (an event of by no means rare occurrence), of using them without hesitation. As there is not the slightest reason for these men wearing arms, and as their carrying them renders breaches of the peace not unfrequent, I have directed the Police to enforce the provisions of the Act, requiring a license for wearing such arms more stringently. The effect has been beneficial, and I would strongly recommend the Sections of the Act by which judicious interference is allowed, being continued in force ; such interference is useful as a most wholesome check on needless carrying of arms, and I have seen or heard of no instance in which the interference has been prejudicial or unwarranted."

It was useless to multiply further authorities for the proposition that the effects of the measure had been most wholesome and ought not to be arrested.

On the last point submitted to the Local Governments the evidence was less uniform. The local Officers were not absolutely agreed whether wild animals had or had not increased in consequence of the Act.

From the Central Provinces, it was distinctly reported that—

Wild beasts have not increased on account of the prohibition against carrying arms. People in danger from wild animals are sufficiently provided to protect themselves.

So also in the papers from the North-West, Mr. Maine found the following statements :—

The Superintendent of the Dhoon states that he sees no reason to believe that wild animals have increased. The Magistrate of Seharunpore states they have decreased. Being a good deal in the jungles in those Districts, I have good opportunities of judging, and I believe these opinions are correct.

The Magistrate of Moozuffernuggur thinks the number of wild animals has increased. I fancy Mr. Martin must refer to wild pigs principally, though he mentions pigs and deer. I see no increase of the latter; the extension of swamp and jungle in the Ganges valley has doubtless led to an increase of pigs, but the remedy for that—reduction of the swamps—is being applied.

And again in a report from Humeerpore, it was stated—

The ravages of wild animals have not, so far as this District is concerned, increased in consequence of the operation of Act XXXI of 1860. On the other hand, the destruction of such animals and consequent payment of rewards have rather progressed since its promulgation.

The opposite view was, however, very strongly taken by certain Officers. The following passage occurred in a letter from the Government of Oude :—

With reference to the statement of persons licensed to carry fire-arms for the destruction of wild animals, submitted for the Districts of your Division in compliance with my Circular No. 40-1390, dated 18th June last, I am directed to observe that it appears to the Chief Commissioner that, except in the Districts of Mohumdee, Baraitch, Gondah, and Hurdui, very few licenses to carry arms for the destruction of wild animals have been given. The Chief Commissioner has been much struck during his present tour in the Oonao District with the great increase of deer and neelgae, and has heard loud complaints of the injury done by them to the crops, which his own observation has shown to be well founded. He is convicted that in some parts near the Ganges, the reclamation of waste lands is retarded by reason of the ravages of these animals, especially the neelgae, which swarm along the banks of that river. The Chief Commissioner has also received complaints of the injury done by wild pigs, which harbour in jungles of the Sooltanpore District; and there are probably few Districts which do not in some parts suffer from the ravages of wild animals.

In the North-West, the Commissioner of the Agra Division reported very emphatically :—

I myself think that in the Doab portion of the Muttra District, and also in Etah and Mynpoorie, the antelopes have largely increased, or at all events have become more troublesome

since the general disarming of the people; but a judicious distribution of licenses for fire-arms (*not swords*) by the several Magistrates will in time mitigate this evil. Mr. Hume, of Etawah, ought to know his own District; but from my own observation there, the immense herds of antelopes appear in some parts to be almost tame and to dispute possession of the country with the human inhabitants. Perhaps, this, however, is no new state of things. In regard to the general question, it is my hope and desire that the rising generation of towns-people and peasants shall grow up unaccustomed to the use of arms.

From Bombay also, the Government was informed to the following effect:—

"A belief that hog, antelope, and neelgae have increased considerably in parts of this Collectorate since the disarming is prevalent, and I think there is some foundation for it. There can be no doubt that the damage done to valuable crops by these animals, by the hog in particular, which are very destructive, and which swarm in some of the Districts bordering on the Mhyee, Saburmutti, and other rivers, is very great, and I imagine that some steps will have to be taken before long to reduce their number. The cultivators do not, however, complain to me or to any Assistants of their not being able to protect their crops against the ravages of these animals in consequence of the number of arms that were allowed for each village being insufficient for the purpose."

And the Governor General in Council put on record his opinion in this form—

Resolution.—It appears clear that wild animals, especially antelope, neelgae, and hog, have increased in number in several Districts of the Presidency in consequence of the disarming measures carried into effect under the provisions of Act XXXI of 1860. Beasts of prey have increased in number in some places, but not to such a degree as the animals named above. There can be no doubt that in some villages the crops must be liable to be injured if the villagers are not allowed a freer use of arms than hitherto, and the Hon'ble the Governor in Council concurs, therefore, in the suggestions made by the two Revenue and Police Commissioners.

Mr. Maine might add that he had recently observed a statement in the transactions of an English scientific society, to the effect that certain wild beasts, supposed to be extinct in particular parts of India, had recently re-appeared there. Among these was the Indian lion, which had been supposed to be expelled to wild countries like Kattiawár. Mr. Maine would, however, observe that any objection derived from the multiplication of wild animals, was an objection which applied to the administrative working out of the measure, and not to the measure itself. The only inference was that licenses had not been granted in sufficient abundance. Mr. Maine thought that perhaps the Legislature might be slightly in fault, for on reading Act XXXI of 1860, he perceived that while licenses to manufacture arms and ammunition might be made subject to a condition, and were forfeited when a breach of the condition occurred, there was no distinct power given to modify by conditions a license to carry arms. A very slight alteration in the Act would enable the local officers to make the license depend on some such condition as that which was described in the following passage, and which was very generally recommended:—

Mr. Forbes has noticed a very judicious condition which he has annexed to the privilege of carrying arms, *viz.*, that five black buck antelopes shall be given in at the nearest Tahsil for each license annually. I think this principle should be adopted everywhere. I would allow only wild elephants to be driven off, and for this purpose each village, where elephants come to destroy the crops, should have a gun unconditionally. But with this exception every man licensed to keep a gun should show that he kept it for a proper object and used it for the purpose. Where prevalence of tigers is the excuse, the licensee should be bound to bring one tiger a year. If a man really keeps a gun to kill tigers, there would be no difficulty or danger in fulfilling the condition; such a man can always find out a tiger's habits and post himself in a tree or some line which the animal frequents, or he can take advantage of a bullock or cow being killed and take up a position and kill the tiger. Where the injury committed by wild pigs is the excuse, the man should be bound to bring in four of these wild animals. I should add four does to the four buck antelopes the licensee is bound to give in where this class of deer abound. If a man really carries a gun to get rid of these animals, he could with ease kill one a month.

With the exception of the slight change he had just described, MR. MAINE'S Bill would simply continue the existing Act. MR. MAINE did not purpose absolutely to prepetuate it. A time might come when the Government of India would be able to dispense with these stringent powers. But that time was so remote that it was not worth while attempting to fix it conjecturally. The Bill would therefore continue the Act until the Governor-General of India in Council should otherwise order.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to amend Act No. XVI of 1864 (to provide for the Registration of Assurances)—His Honour the Lieutenant-Governor, the Hon'ble Messrs. Maine and Taylor, the Hon'ble the Mahárájá of Vizianagram, and the Hon'ble Messrs. Muir and Cowie and the Mover.

The Council adjourned till the 2nd February.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Dept, (Legislative).

CALCUTTA,
The 26th January 1866.

Govt. of India Central Printing Office—No. 159 L.D.—7-10-84.—70.

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Government House on Friday, the 2nd February 1866.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding.*
His Honour the Lieutenant-Governor of Bengal.
His Excellency the Commander-in-Chief.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble Colonel H. M. Durand, C.B.
The Hon'ble Mahárájá Vijayaráma Gajapati Ráj Bahádur of Vizianagram
The Hon'ble Rájá Sáhib Dyál Bahádur.
The Hon'ble W. Muir.
The Hon'ble Mahárajá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.
The Hon'ble D. Cowie.
The Hon'ble Stewart St. John Gordon.
The Hon'ble George Ross.

The Hon'ble MR. Ross took the oath of allegiance, and the oath that he would faithfully discharge the duties of his office.

ASSAM COMPANY'S BILL.

The Hon'ble MR. MAINE, in moving for leave to introduce a Bill to repeal Act No. IV of 1855 (for incorporating for a further period, and for giving further powers to the Assam Company), said that the necessity for passing this Bill, which he hoped the Council would regard simply as a formal matter, had been imposed on them by the British Parliament. The Assam Tea Company was originally incorporated by an Act of the Indian Legislature, Act IV of 1855. But in the last Session of Parliament, in consequence, as Mr. Maine supposed, of the shares of the Company being now largely held in England, the Company applied to the English Parliament for an Act of incorporation, which contained this Clause:—

"This Act shall commence and have effect on and after the expiration of two months next after the day of the passing by the Legislative Council of the Governor-General of India of an Act repealing the Society's Act."

He did not suppose that the Council would have any objection to repeal the old Act, which was now quite useless. But the meaning of the Clause in the Act of Parliament was rather ambiguous. Mr. Maine thought it could hardly have been meant that the Company was to be left for two months without any organization, and he imagined he would best carry out the intention of Parliament by repealing the existing Act, but declaring that the incorporation, powers, rights and liabilities of the Company should continue for a period of two months after the passing of this Act as if the repealing Act had not been passed.

The Motion was put and agreed to.

OUDE LIMITATION BILL.

The Hon'ble MR. MUIR, in moving for leave to introduce a Bill to exempt certain suits in Oude from the operation of the rules of limitation in force in that Province, said that he would state briefly the necessity for the Bill, and the nature of the rules it was proposed to enact.

The rules for limitation now in force in the Revenue Courts of Oude, were the same as those in force in the Presidency of Bengal at the time the Province was annexed. In other words, it was the old Regulation Law, under which, in ordinary suits for land, the limitation was twelve years; under certain circumstances of fraud and force, the limitation was sixty years; and for suits to redeem land in possession of the mortgagee, there was no limit whatever.

The first part of the Bill related to ordinary suits for land. In these, as before explained, the existing limitation was twelve years from the date of institution of the suit. But, referring to the events which had of late occurred in Oude, he would show that the period of twelve years from the date of institution was of an entirely exceptional character, and was daily becoming more so. For a suit instituted in the present year, twelve years would take us back to 1854, that is, nearly to the close of the Native administration. In 1856, on our annexation of the Province, a summary settlement was made with the village zemindars; then followed 1857 and 1858 when possession was rudely disturbed by rebellion and anarchy; and on our re-assumption of the Province, a summary settlement was, in 1858, made on principles widely different from the previous settlement of 1856. Claimants disputing the title of persons admitted to the last summary settlement, have ordinarily been referred to the regular settlement which is now in progress.

Such being the exceptional character of the last thirteen years, it was proposed to make the period of limitation count back twelve years from the annex-

ation of the Province, that was, it would run back to the 13th February 1841. No suit would be barred on the plea of limitation if the cause of action arose subsequent to that date. This was the same limitation as that provided in Act XVI of 1865 for claims relating to sub-tenures; and there was an advantage in having the rule uniform.

The second change proposed to be made in the law related to the redemption of mortgages. As the law now stood, there was, as he had before stated, absolutely no limitation, whatever period might have elapsed since the mortgage was executed, however long the mortgagee might have been in possession, or whatever changes might have occurred in the meantime. Mr. Wingfield had long ago pointed out that this state of the law was entirely inapplicable to Oude, where the frequent change of possession, and the insecurity of property, and the confusion of the times, rendered it difficult to prove any mortgage that was not of recent date. The Chief Commissioner had accordingly, in 1860, reduced the period of limitation to twelve years; but his circular order to that effect not having been confirmed by the Supreme Government at the time of the passing of the Councils' Act, was now found to possess no force of law.

Under these circumstances it had been deemed expedient to apply the same limitation to suits for redemption of mortgage as had been proposed for ordinary suits; and the Bill would accordingly provide that no suit would lie for redemption of any mortgage executed before the 13th February 1841. Thus the term of limitation would be uniform in all suits in the Revenue Courts relating to land, which he thought would be admitted to be a suitable arrangement.

Before the Bill was introduced, it would be forwarded to the Chief Commissioner in order that the Council might have the benefit of his opinion on its provisions.

The Motion was put and agreed to.

EXECUTION OF PROCESS (STRAITS' SETTLEMENT) BILL.

The Hon'ble MR. MAINE moved that the Select Committee on the Bill to extend Act XXIII of 1840 (for executing within the local limits of the jurisdiction of Her Majesty's Courts legal process issued by Authorities in the Mofussil) be reconstituted. He said that the notice of motion hardly gave a proper idea of what the Bill was. It really was a Bill to enable the execution of the process of the Courts of Burmah to be effected in the Straits' Settlement. It was an old Bill, originally introduced by the Hon'ble Mr. Forbes. It had lain over like many other Bills relating to the Straits' Settle-

ment, because the disannexation of the Settlement seemed to be close at hand. The Government of the Settlement now wished the Bill to be passed. At present, no Member of the Council of the Governor-General, except himself, was on the Committee, and it was therefore necessary to reconstitute it.

The Motion was put and agreed to.

SUNDRY BILLS.

The Hon'ble MR. MAINE also moved that the Hon'ble Mr. Ross be added to the Select Committees on the following Bills:—

For consolidating and amending the laws relating to the Procedure of the Courts of Civil Judicature in British India.

For the management of the Post Office, for the regulation of the duties of Postage, and for the punishment of offences against the Post Office.

To amend Act No. XVIII of 1854 (relating to Railways in India).

To amend the law of Partnership in India.

For the incorporation, regulation, and winding up of Trading Companies and other Associations.

To provide a summary procedure on Bills of Exchange, and to amend in certain respects the Commercial law of British India.

With regard to the first of these Committees, MR. MAINE observed that it was a Committee on Mr. Harington's amended Code of Civil Procedure. The Committee had already presented its Report. But the Secretary of State had requested that the Council should not proceed further with the Bill until he and the Members of the Indian Law Commission should have had time fully to consider the proposed measure.

The Hon'ble MR. GREY said that he would take the opportunity of this motion to mention that it was improbable that the Select Committee on the Post Office Bill would be in a position to submit their report within the period mentioned in the order directing the reference of the Bill to the Committee. The reason was that the Governor-General had considered it desirable to call for information on a point which had been raised since the publication of the Bill. He referred to the proposal emanating originally from the Trades' Association, to reduce by one-half the postage on all letters exceeding a quarter tolah in weight. There was no doubt that such a measure would involve a considerable immediate loss of revenue, and therefore the question necessarily arose whether the measure

was one which, in the general interests of the people of India, the Government ought to adopt, notwithstanding the immediate loss of revenue which it entailed. This question turned mainly on the point whether the measure would be likely to lead to considerable extension of correspondence, and thus, to the great benefit of the people, enlarge the area of postal usefulness. The Director General of the Post Office, an Officer of very great experience, was of opinion that the measure would not have such an effect, because he held—and no doubt as a general proposition rightly held—that the extension of correspondence depended mainly on the minimum rate of charge for which a letter could be carried from one place to another.

He might mention too that the Post Office Commissioners, on whose elaborate report the present postal system was established, had expressed a clear opinion that the quarter tolah unit of weight, which was originally adopted, he might observe, as far back as 1839, was quite sufficient to meet the wants of the Native public. It was, however, now stated in some quarters that this low unit of weight did practically affect the extent of Native correspondence, because (it was said) there was no means out of large towns of obtaining the description of paper which was rendered necessary by that unit. This was a statement which merited the most careful consideration and enquiry, and His Excellency had accordingly directed that information on the point should be collected.

As the general provisions of the Bill were not of an urgent character (the main object of the Bill which was prepared by the head of the Post Office Department having been, he might remark, simply to re-enact the existing law, adapting its provisions to the circumstances of the present time with some re-arrangement of details, and with the addition of one or two provisions which the Director General considered it desirable to introduce for the better practical working of the Department and for the greater security of the public), it might perhaps be as well that the Bill should lie over until a decision could be come to on the really important point that had been raised since the Bill was placed before the public.

Mr. Grey added that the Government was also in correspondence with the Director General of the Post Office regarding certain proposals made by that Officer affecting the rates of postage and the scales of weight for newspapers, books and parcels.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to extend Act XXIII of 1840 (for executing within the local limits of the jurisdiction of Her Majesty's Courts legal process issued by Authorities in the Mofussil)—The Hon'ble Colonel Durand, the Hon'ble Messrs. Muir and Gordon and the Mover.

The Council adjourned till the 9th February.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Dept. (*Legislative.*)

CALCUTTA,
The 2nd February 1886.

Government of India Central Printing Office.—No 100 L D.—27 3-84 —50.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Government House on Friday, the 9th February 1866.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Honour the Lieutenant-Governor of Bengal.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble G. Taylor.
The Hon'ble Colonel H. M. Durand, C.B.
The Hon'ble Mahárájá Vijayaráma Gajapati Ráj Bahádur of Vizianagram.
The Hon'ble Rájá Sáhib Dyál Bahádur.
The Hon'ble W. Muir.
The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.
The Hon'ble D. Cowie.
The Hon'ble Stewart St. John Gordon.
The Hon'ble George Ross.

ARMS' ACT CONTINUANCE BILL.

The Hon'ble MR. MAINE introduced the Bill to continue Act No. XXXI of 1860 (relating to the manufacture, importation and sale of arms and ammunition, and for regulating the right to keep and use the same, and to give power of disarming in certain cases) and for other purposes, and moved that it be referred to a Select Committee, with instructions to report in a fortnight. He said that it was originally his intention, after giving ample time to the Council to consider the papers which had been circulated, to pass the Bill under suspension of the standing orders without reference to a Committee. But he had had conversations with several Members of the Council particularly with the Hon'ble Mr. Gordon, and he found that that Hon'ble Member, whose experience in the working of the Act was considerable, thought that it might be usefully amended in various minor particulars. He (MR. MAINE) should be sorry to make any alterations in an Act which seemed to have been carefully prepared and which had been sharply criticised at the time of its enactment. But he was himself desirous to refer the Bill to

a Committee, partly because it was desirable to follow the Rules for the Conduct of Business and partly because he had introduced a Section empowering the Magistrates to grant licenses subject to such conditions as they might consider necessary.

He did not commit himself to unreserved approval of what was called in the papers Mr. Forbes' condition. But he thought that licenses to carry arms might often be usefully granted on such conditions, or on one slightly modified from Mr. Forbes' form. MR. MAINE did not share in the alarm of those who thought that the measure would be rendered nugatory by the local officers granting fanciful or capricious licenses. The Local Government could by proper action secure that such licenses should not be granted.

The Hon'ble MR. MUIR said that, before the Bill went to Committee, he should like to say a few words regarding a point little touched upon in the reports which had been circulated, namely, the defenceless state in which the people in outlying tracts might be placed by a too stringent enforcement of the law.

He fully and entirely agreed in the great advantages which the country had gained by the measure which it was intended to perpetuate. He fully agreed that it had already caused a greater amenity of manners among the people; that habits of ferocity and violence formerly prevailing among the criminal population had been ameliorated; that security of life and property had been promoted, and peaceful and industrious persuits advanced. He had had some opportunity of observing the results of the measure in the districts to which disarming operations had been extended. The mass of arms taken from the people in the process of disarming was enormous. The purposes to which these had been turned were sometimes curious. In one district the barrels of matchlocks had been used for the construction of a record room; and in looking at the long array of racks thus formed, like an armoury, out of warlike weapons, one could not help reflecting on the immense amount of arms which had been in the possession of the people, and the deeds of violence and bloodshed to which they might have been turned in times of disquietude or rebellion. Elsewhere large sums had been realized from the sale of broken up swords, spears and other arms; the money thus obtained was not appropriated by Government, but had been usefully employed in works of benefit to the people. From this fund a large and handsome building had been erected, for example, at Allahabad, as the traveller might see, constructed according to the design of his friend the Secretary in the Home Department, then Magistrate, for the accommodation of witnesses and other persons attending the Courts.

Considering the vast amount of arms which had been given up by the people, the use to which they were formerly turned, and the change of habits which had come over the population since their disarmament, he (Mr. MUIR) considered that the advantages resulting from that operation had not been over-stated. One might almost say the proverb had been fulfilled, that swords had been turned into plough-shares and spears into pruning-hooks. Emphatically the arts of war and violence had given place to the arts of civilization and peace.

MR. MUIR also agreed in what had been said about the increase of wild animals in many of the districts where the disarming operations had been carried on. But the provisions made in the Bill would meet this objection. At the same time, there might be a danger lest conditions should be capriciously introduced into licenses by Magistrates; but no doubt care would be taken in administering the Act to avoid unnecessary interference with the people in this respect. The Local Governments might be trusted to watch the working of the Act and prevent any arbitrary action of the kind apprehended.

But it was not only from wild animals that men deprived of their arms would be exposed to attack and injury in life and property. They were exposed to danger from robbers, dacoits, or other bands of armed men.

We had taken away arms from the people and had left them defenceless. We had prohibited the people from the practice of arms, and made them forget their use. Formerly, we could say in times of difficulty, when obliged to withdraw our outposts—"You have swords and matchlocks; you can use them at least from behind your walls, and you must protect yourselves as best you can." We are no longer able to say that; we have withdrawn their arms and left the people defenceless.

In those parts of the country which he might term the interior districts, those namely that were fully and permanently protected by our Police and Military posts, MR. MUIR did not think that this objection had any weight. The Government must accepted the position that they are responsible for the defence and security of the people. There was, he believed, only one Officer (the Magistrate of Goruckpore) who had urged the objection. In arguing against the continuance of the Act, that Officer had said :—

"If the whole population were to be allowed according to their means to purchase and keep arms, no great danger is, I think, likely to arise in a political point of view, whereas there would be less chance of a few lawless persons being able to attack and plunder villages as is now done. Dacoities would not, I think, be so frequent if the mass of the people were not so defenceless as they are."

This, however, had been well met by Mr. Batten, the Commissioner of Agra, where he said: •

"Of course Magistrates must be careful to see that the predatory classes do not gain the upperhand of the honest classes by the loss on the part of the latter of the means of defence."

That was the true state of the case. The Government must recognise the obligation (having deprived the people of the means of protecting themselves) of providing at all times and under all circumstances for the tranquillity of the country. The people, on their part, must accept the altered state of circumstances, and recognize the new régime as upon the whole conferring vastly greater advantages than the old; seeing that it promoted to the utmost the peace and happiness, the civilization and prosperity of the country.

These remarks had reference to what he (MR. MUIR) had termed the interior districts. But there were parts of the country adjoining Native States where the population was exposed to incursions and lawless attacks from armed robbers or enemies; and where especially in times of disquiet and commotion they would always from their very situation be liable to raids of this nature, and be beyond the power of ordinary defence from us. We have deprived them of the means of defending themselves, and yet we leave them in the power of men who possess arms and practise their use, and may at any time attack them. MR. MUIR did not think that our subjects thus situated should be placed at so great a disadvantage. It was quite true that such localities had not been generally subjected to the disarming process. But at the same time they were fully amenable to those parts of the law which required a license to warrant their carrying arms without question by the Police. He would refer to the passages in the district reports which touched on this subject. And he might notice in passing that the infrequent mention of the topic in these papers was a remarkable proof of the profound security which prevailed throughout the empire.

The Commissioner of the Agra Division said:—

"The Magistrate of Muttra reports that, east of the Jumna, every village was disarmed; but to the west of the river only 15 Goojur villages, and the towns of Muttra and Bindiabun, were disarmed, and all the other villages were allowed to return their arms—one of the causes being the neighbourhood of the independent State of Bhurtpore; *but the people were not allowed to carry them without a license, and were only to keep them in their houses.*"

If they were allowed only to keep their arms in their houses, and not carry them and use them, they would soon altogether forget their use, and in

time of danger would be unable to protect themselves, except under very great disadvantages, against their neighbours who were in the constant use and practice of arms.

So also at page 20 the Commissioner of the Allahabad Division said :—

"In localities infested with wild animals, or even liable to raids from dacoits, free permission has been accorded for the carrying of arms. The only restriction placed on the inhabitants of such places has been a demand for information as to the number and nature of the weapons required."

Here there would appear to be given a larger license than in the district of Muttra.

So the Commissioner of the Benares Division wrote :—

"In Mirzapore, the Arms' Act is only partially introduced, that portion south of the Ganges being unaffected under the terms of the Governor General's Notification No. 5926, dated 21st December 1858."

And the Commissioner of Jhansi said :—

"Possession of arms is unrestricted, and, as a matter of fact, the people have plenty of both swords and matchlocks. *Wearing arms is prohibited without a license, and the effect of the prohibition is obviously beneficial in many ways.*"

Of course the prohibition was beneficial in certain parts of Jhansi, as in the larger cities and towns, and should be continued there. But in the outlying and exposed positions, there ought to be no restriction against the carrying of arms ; that ought to be allowed without any license.

As we were now prolonging the Act indefinitely, it appeared to him (MR. MUIR) that this point should not be overlooked. It might be met by empowering the local authorities, under proper sanction, to give not merely individual and personal licenses for carrying arms, but to grant a local license or exemption in respect of certain villages or tracts, which would enable all within such limits to carry arms.

If this suggestion were deemed worthy of attention, it could be taken up by the Select Committee to whom the Hon'ble Introducer of the Bill had just moved that it should be referred. And he (MR. MUIR) would only repeat that he entirely concurred in the general purport of the Bill.

The Hon'ble MR. MAYNE said that it seemed to him that the observations of his Hon'ble friend were entitled to great consideration. As far as he could

understand him, his Hon'ble friend thought that not only classes but districts and villages should be exempted. MR. MAINE thought the words of the Act sufficiently wide to admit of such exemptions, and his present impression was that all that was necessary was an administrative order.

He would, however, examine the suggestion in Committee, and, if necessary, consent to it. So far as he understood the proposed amendment he at present fully agreed to it.

The Motion was put and agreed to.

CRIMINAL PROCEDURE ACT AMENDMENT BILL.

The Hon'ble MR. MAINE also introduced the Bill to amend Act No. XXV of 1861 (for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter), and moved that it be referred to a Select Committee, with instructions to report in a fortnight. He said that the Council would recollect that this Bill was intended to remedy some slight defects in the Code of Criminal Procedure, which provides that certain offences that might well be tried by Magistrates of a lower grade should only be tried by Magistrates of a higher grade. Of course it would be understood that, if the punishment required to be inflicted was greater than a subordinate Magistrate was competent to award, the case would be sent up to be dealt with by a Magistrate of the higher grade. The Bill had been introduced at the representation of the Governments of Bengal, Madras, and Bombay, and the Government of the North-West also thought that some such measure was necessary.

The Motion was put and agreed to.

PLEADERS AND MOOKHTARS' ACT EXTENSION (N.-W. P.) BILL.

The Hon'ble MR. MAINE also introduced the Bill to extend Act No. XX of 1865 (to amend the law relating to Pleaders and Mookhtars), to the Sudder Court of the North-Western Provinces, and moved that it be referred to a Select Committee, with instructions to report in a fortnight. He said that this Bill was introduced at the instance of the Sudder Court of the North-Western Provinces, and, as he had before explained, it was only necessitated by the establishment of the High Court of the North-West having been delayed longer than was anticipated. From information lately received, which he believed to be trustworthy, he had doubts whether the Bill would ever come into operation. The Letters Patent for the High Court to be established in the North-West Provinces were little less advanced than the new Letters Patent for the

High Courts in the Presidency Towns. Still there was no harm in referring the Bill to a Committee. It had been sent up to the Sudder Court of the North-West, and he had no doubt that, before the time for report arrived, the Council would be in receipt of their opinion on the measure.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill to continue Act No. XXXI of 1860 (relating to the manufacture, importation and sale of arms and ammunition, and for regulating the right to keep and use the same, and to give power of disarming in certain cases) and for other purposes—The Hon'ble Colonel Durand, the Hon'ble Messrs. Muir and Gordon and the Mover.

On the Bill to amend Act No. XXV of 1861 (for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter)—The Hon'ble Mr. Grey, the Hon'ble the Mahárájá of Vizianagram, the Hon'ble Mr. Gordon and the Mover.

On the Bill to extend Act No. XX of 1865 (to amend the law relating to Pleaders and Mookhtars), to the Sudder Court of the North-Western Provinces—The Hon'ble Messrs. Grey and Taylor, the Hon'ble Rájá Sáhib Dyál Bahádur and the Mover.

The Council adjourned till the 16th February.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

CALCUTTA ;
The 9th February 1866.

Government of India Central Printing Office.—No. 95 (f) L. D.—21-3-1900.—90.

Abstracts of the Proceeding of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Government House on Friday, the 16th February 1866.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*

The Hon'ble H. Sumner Mine.

The Hon'ble W. Grey.

The Hon'ble Colonel H. M. Durand, C.B.

The Hon'ble Mahárájá Vijayaráma Gajapati Ráj Bahádur of Vizianagram.

The Hon'ble Rájá Sáhib Dyál Bahádur.

The Hon'ble W. Muir.

The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahadur, Mahárájá of Burdwan.

The Hon'ble D. Cowie.

The Hon'ble Stewart St. John Gordon.

The Hon'ble George Ross.

ASSAM COMPANY'S BILL.

The Hon'ble MR. MAINE introduced the Bill to repeal Act No. IV of 1855 (for incorporating for a further period, and for giving further powers to the Assam Company), and moved that it be referred to a Select Committee, with instructions to report in a fortnight. He said that he had explained to the Council on a former occasion that this Bill was necessitated by a provision in the private Act of Parliament, 28th and 29th Vic., cap. CXXIX, for the incorporation of the Assam Tea Company. One of the Sections of that Act provided that it was only to come into force when a Bill had been passed by this Council to repeal Act IV of 1855. But the Act of Parliament was not to come into operation until two months after the passing by this Council of the repealing Bill. The Bill which he now introduced proposed to repeal Act IV of 1855. But as he could not suppose that Parliament intended that for two months the Assam Tea Company should be without any constitution, the Bill continued provisionally for two months the incorporation, powers, rights and liabilities of the Company.

The Motion was put and agreed to.

PUNJAB CHIEF COURT BILL.

The Hon'ble MR. MAINE, in moving for leave to introduce a Bill to amend the constitution of the Chief Court of Judicature in the Punjab and its Dependencies, said that the three motions which stood next in his name on the paper were intended to put an end to a doubt which appeared to be entertained by Her Majesty's Secretary of State as to the validity of the Bill, passed at their last sittings, to establish the Chief Court of the Punjab. That Bill now stood on the Statute Book as Act No. XXIII of 1865. MR. MAINE, did not himself share in the doubt, but he thought the Council would concur with him in considering that, when the matter in question was so serious as the establishment of a Court having not only Civil but Criminal and indeed capital Criminal jurisdiction, the very possibility of doubt ought to be obviated and removed. In order to explain the nature of the doubt, he would have to retrace the history of the measure.

It was unnecessary to remind His Excellency that, during the summer of 1864, a series of measures was discussed and decided upon by the Government of India, intended partly to improve the administration of Civil and Criminal Justice throughout the country, and partly, and perhaps chiefly, to mitigate the scandal and injustice of bringing down European British subjects for trial at the Presidency Town. The first of these measures, and that which most attracted public attention (and, as MR. MAINE thought, engaged it unfortunately, because, taken by itself, the measure was likely to be misunderstood) was such an alteration of the Criminal procedure of the High Court as would enable it to be worked out and applied at places distant from the Presidency Towns, where the supply of material for juries was scanty. The second was the creation of a High Court for the North-Western Provinces under the High Court's Act, 1861 The third was the establishment of a Chief Court for the Punjab which might be described as a minor High Court, that is, a Court which might improve the administration of justice in that Province by giving to it greater regularity and stability, but which at the same time would not disturb the system characteristic of that Province (a system for which MR. MAINE thought great public gratitude was due) so much as it would probably be disturbed by a complete High Court established under the parliamentary legislation of 1861. The experiment, it would be seem, was on a considerable scale and extremely costly. Nor could it be said to be yet completed, for some less cumbrous and costly machinery was clearly required for the repression of the petty offences of that class of Europeans in the Mofussil with which MR. MAINE supposed the Europeans interested in the great industries

of this part of India had extraordinarily little sympathy. It was quite inevitable that the parts of this great scheme should be laid before the Council and the public piecemeal and in a fragmentary shape. The reason was that the legislative power to carry out these various measures was not uniformly distributed. The entire legislative power to reform the Criminal procedure of the High Court resided with that Council, because it was expressly reserved to them by the Letters Patent of the older High Courts. On the other hand the entire legislative power to establish the High Court for the North-Western Provinces belonged to the Secretary of State for India, who, in the name of Her Majesty, could alone create a High Court. Lastly, the power to establish the Chief Court of the Punjab was divided between this legislature and the Secretary of State for India in Council. Almost the whole legislative capacity to create such a Court was lodged with that Council, but there was an exception in one particular on account of the language of 3 and 4 Wm. IV, cap. 85, Section 46, which provided as follows:—

"That it shall not be lawful for the said Governor General in Council, without the previous sanction of the said Court of Directors, to make any law or regulation whereby power shall be given to any Courts of Justice, other than the Courts of Justice established by His Majesty's Charters, to sentence to the punishment of death any of His Majesty's natural born subjects born in Europe, or the children of such subjects, or which shall abolish any of the Courts of Justice established by His Majesty's Charters."

It followed that the previous sanction of Her Majesty's Secretary of State for India in Council was required to give validity to Act No. XXIII of 1865, because, under the Act for the better Government of India, which transferred that Government from the East India Company to the Crown, the words "Secretary of State for India in Council" were to be read wherever in an Act of Parliament the expressions "East India Company" or "Court of Directors" occurred.

That being the state of the law in 1864 the Government addressed the Secretary of State a despatch in which this passage occurred:—

"Although the Select Committee have been directed to make their report within six weeks from the date of the introduction of the Bill, it is not our intention to propose that the Bill should pass into law until we hear from you, and are informed of the views of her Majesty's Government on the subject of the important changes now proposed in the constitution of the Chief Civil and Criminal Court of the Punjab and its Dependencies, but as it is most desirable that the Bill, if approved, should come into operation with the least possible delay, we venture to solicit an early reply to this letter."

As soon as the despatch reached home, MR. MAINE had reason to believe that it received the attention and indeed the anxious consideration of the Secretary of State in his Council, and the result of that consideration was that full and unreserved sanction was given to the measure. While, however, the discussion was proceeding at the India Office, time was passing here, and the period during which the additional Members could conveniently be kept together was drawing to a close. Accordingly, on the 20th March 1865, the Governor General telegraphed to the Secretary of State by the Indo-European line, which had recently been opened, to the following effect:—

"With reference to Section 46, cap. 85, 3 and 4 Wm IV, will you sanction by telegram our passing the Punjab Chief Court Bill to come in force whenever the Government of India shall order, such order to await your consent"

To which the Secretary of State replied by telegraph—

"Previous sanction to Punjab Bill being necessary, sanction has been sent by last mail to Bill in the shape sent home. Previous sanction would be equally necessary for altering Bill."

The meaning of the concluding words MR. MAINE would explain presently.

Now when the last telegram arrived, MR. MAINE had left India for Europe. But Mr. Harington, with his customary sagacity, perceived the necessity of being absolutely sure that the previous sanction had been sufficiently given, and under his advice, His Excellency consulted the Acting Advocate General on the point. Mr. Graham replied on the 7th of April —

"I have the honour to state that in my opinion the sanction given by the Right Hon'ble the Secretary of State to the Bill in its original form is sufficient to enable the Council of the Governor General to legally pass the Bill as finally settled"

Thus advised, the Governor General, on the 17th April 1865, gave his assent to the Bill, and in the opinion of the Government of India a law or regulation had been made, which, though it transferred the Criminal jurisdiction over Europeans in the Punjab from High Court to the Chief Court, had received the previous sanction of the Secretary of State for India in Council.

When the Act assented to by His Excellency reached the Home Government, MR. MAINE had reason to believe that two difficulties, one of a very formidable character, suggested themselves to the legal advisers of the Secretary of State. One of them was indicated in the last words of Sir C. Wood's telegram. It took the form of a doubt whether, when previous sanction is required for any measure of an Indian Legislature, such previous sanction

ought not to be given to every line and iota of the contemplated Bill. Consequently it was doubted whether, if the Bill was altered in Select Committee, a fresh sanction was not required for the change, and so on for every subsequent amendment however small. That doubt MR. MAINE had described as formidable, not for its effect on this Council, because its measures rarely required previous sanction of any sort, but because the words "previous sanction" occurred in the Indian Councils' Act. For example, the previous sanction of the Governor General was required for all alterations of the Penal Code effected by a local legislature, and, as there were few Bills which did not prescribe penalties, the necessity for His Excellency's sanction was continually arising. If, however, this sanction, once given, was invalidated by every petty change in the detail of Bills, it was not too much to say that the whole action of the local Councils would be paralysed ; and all local legislation would tend to resolve itself into the shape which it wore before 1861—an interminable correspondence between the Imperial Government and the Governments of the Presidencies. Fortunately, however, the point was referred to the Law-Officers of the Crown—the Attorney and Solicitor General—assisted by Mr. Forsyth, the Counsel to the India Office. Their opinion had recently reached the Government of India, and was to the effect that the previous sanction was sufficiently given if the principal and main provisions of the Indian Act obtained previous sanction, as was the case in the present instance. This opinion exactly agreed with the grounds assigned for his view by the Acting Advocate General, and so far, therefore, the result was eminently satisfactory.

There was, however, reason to believe that it was further doubted by the Secretary of State, of course under legal advice, whether a previous sanction communicated by telegraph was sufficient, and whether the Governor General ought not to have waited and read the signed despatch of the Home Government before he gave his assent to the Bill. Such an objection MR. MAINE did not think tenable. The telegraphic wire in the one case, the paper and the mail in the other, were only media of communication, and it seemed to MR. MAINE indifferent, in point of law and reason, whether the mind of the Secretary of State was communicated to this Government through one medium or the other. Moreover, not only did the telegram communicate the previous sanction, but it also stated that a written despatch had left England which also signified it. There was yet another fact bearing on the point. Though MR. MAINE was not then in India, and could not speak of these matters as known to himself personally, he had reason to believe that even the written despatch reached India in time to be read by His Excellency before he gave his assent to the Bill, although His

Excellency, having been advised that sufficient previous sanction had already been given, did not think fit to await it. It was detained at Allahabad, and was there received by the Governor General on his way up country. Under such circumstances MR. MAINE thought it impossible that any objection to the validity of the Chief Court Act could be successfully raised before a Court of Law. However, the despatch from the Home Government covering the opinion given by the Law-Officers of the Crown ended with the following words :—"This opinion implies that the sanction conveyed by my letter of the 17th March reached you before the passing of the Act." In themselves, the significance of these words might be open to question, but, as MR. MAINE had explained, the doubt was known to have existed, and accordingly the Secretary of State was asked by telegraph whether the Punjab Chief Court might be established. He replied by a reference to the last paragraph of his despatch, which had already been quoted, and thus, on the whole, MR. MAINE was disposed to infer that the Secretary of State adhered to the view of the insufficiency of a telegraphic sanction. If that were so, however, MR. MAINE could not doubt that his duty was to ask the Council to re-enact the measure, not only because every shadow of a question on such a subject ought to be removed, but because, if the Secretary of State did entertain such a doubt, it was clearly his duty to withhold his assent from the Act ; and such assent had not been received in any absolute form.

MR. MAINE'S reasons for asking the Council to re-enact the Bill summarily and as a matter of form were these : It had received the completest approval on its merits from the Home Government. It was most fully discussed in Council and sifted in Committee. It passed without a division and without verbal opposition, for the very gentleman, Mr. Bullen, who had felt objections to some part of the series of measures which MR. MAINE had described, had waived those objections so far as this particular measure was concerned, and had concurred in the urgent necessity for passing it.

The Motion was put and agreed to.

The Hon'ble MR. MAINE having applied to His Excellency the President to suspend the Rules for the Conduct of Business.

The President declared the Rules suspended.

The Hon'ble MR. MAINE then introduced the Bill, and moved that it be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that Bill be passed.

The Motion was put and agreed to.

PUBLIC MUSEUM (CALCUTTA) BILL.

The Hon'ble MR. MAINE asked leave to postpone the Motion which stood next on the List of business; for leave to introduce a Bill to provide for the establishment of a Public Museum at Calcutta, as the necessary preliminary arrangements with the Asiatic Society were not as yet sufficiently advanced.

Leave was granted.

SUMMARY PROCEDURE ON BILLS OF EXCHANGE BILL.

The Hon'ble MR. MAINE also presented the Report of the Select Committee on the Bill to provide a Summary Procedure on Bills of Exchange and to amend in certain respects the Commercial Law of British India.

The following Select Committee was named :—

On the Bill to repeal Act No. IV of 1855 (for incorporating for a further period, and for giving further powers to the Assam Company)—The Hon'ble Messrs. Cowie, Gordon, Ross and the Mover.

The Council adjourned till the 23rd February.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

CALCUTTA;
The 16th February 1866.

Government of India Central Printing Office—No. 5 L. D.—20-6-1900.—80—Jos. C.

Abstract of the Proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic, cap. 67.

The Council met at Government House on Friday, the 23rd February 1866.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding.*
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble Colonel H. M. Durand, C. B.
The Hon'ble Maháráját Vijayaráma Gajapati Ráj Bahádur of Vizianagram.
The Hon'ble Rájá Sáhib Dyál Bahádur.
The Hon'ble W. Muir.
The Hon'ble Maháráját Dhíraj Mahtab Chand Bahádur, Maháráját of Burdwan.
The Hon'ble D. Cowie.
The Hon'ble Stewart St. John Gordon.

SUMMARY PROCEDURE ON BILLS OF EXCHANGE BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill to provide a summary procedure on Bills of Exchange and to amend in certain respects the Commercial Law of British India be taken into consideration. He said that the amendments which the Select Committee proposed to introduce in the Bill were, he hoped, of some value, and one was of some importance. The first change which the Select Committee proposed was the substitution in Section 3 of "seven days" for "twelve days." Twelve days was the time mentioned in the English Act. But it had been observed to the Select Committee that the minimum time within which a decree might be obtained under the Code of Civil Procedure was eight days. Now, no doubt a plaintiff in a suit upon a Bill of Exchange did not always obtain his decree in the minimum time. Indeed in some simple cases, as Mr. MAINE had explained on a former occasion, he was often inordinately delayed. But still there was some anomaly in having a shorter period named for the summary than for the ordinary procedure. Further it was inexpedient to give the plaintiff any temptation to prefer the ordinary to the summary

procedure, because he might thereby inflict on the defendant unnecessary costs. The Committee thought that the justice of the case would be met by substituting "seven days" for "twelve days."

In the same Section, Mr. MAINE proposed, with His Excellency's leave, in accordance with a suggestion of the British Indian Association, to move the substitution in line 1 of the word "shall" for "may." So long as the procedure was confined to the High Court, he had no objection to give a discretion to the Judges. But by the Section which followed (Section 8), the Local Government was empowered to extend the procedure to the Mofussil Courts, and in the case of those Courts it would, on the whole, perhaps, be better that the direction should be imperative. The British Indian Association had in fact expressed doubts whether the summary procedure should be extended at all to the Mofussil. MR. MAINE agreed in this to the extent of thinking that the Local Government should exercise great caution in extending the procedure, and should be satisfied that the duty of superintending and carrying it out was lodged with Officers capable of exercising the powers confided to them.

With regard to the whole of these Sections providing a summary procedure, the Bombay Chamber of Commerce had represented, in a petition which had been received after the Select Committee had closed its sittings, that not only should the decree be expedited but that execution of the decree should be summary also. Now the Bombay Chamber had so greatly assisted the Government by its intelligent discussion of the Bills submitted to it that he would be most willing to comply with its wishes, but he really believed that it was impossible to do so. The state of the case was that, under the ordinary Common-Law procedure in England, it might be that a considerable interval elapsed between judgment and execution; and therefore there was good reason in England for rendering the procedure on Bills of Exchange more summary. It appeared, however, that the improved procedure at home and the procedure of the Code in India with respect to execution were exactly identical. In both cases execution might be had at once. The real grievances of the Bombay Chamber, as appeared from the sequel of their petition, were not of a kind to be remedied by any legislation. The Chamber complained in fact of delays in the Registrar's and Taxing Master's Offices. As respects most of the matters complained of, it was for the Local Government or the High Court to afford relief. But MR. MAINE would observe that in respect of the taxation of costs, the costs under the new procedure would generally be fixed costs, and in the very few cases in which they would be taxed, it was competent for the plaintiff

under a later Act (XX of 1862) to at once ask for execution of the decree on the sum awarded to him before the costs were ascertained by taxation, and to postpone to a later period execution as to costs.' On the whole, MR. MAINE did not think it possible to introduce any new Section. Section 11 which provided that the acceptance of a Bill, whether inland or foreign, should be in writing, had been a good deal considered by the Select Committee, who thought that it should remain as it stood. MR. MAINE had explained to the Council that, as regarded inland Bills, it stated what had been the law of England for a century, while as regarded foreign Bills, it agreed with what had been the English law for the last six or seven years. The Section would not interfere with Native usages. The Committee had had the benefit of Rájá Sáhib Dyál's assistance, and had ascertained from him that the Native usage was to accept hundís in writing, unless in cases where they were drawn after date.

Section 13 put all inland Bills on a level with foreign Bills, and would, if adopted, give a legislative sanction to the present custom of merchants in India. It provided that protest of a Bill of Exchange, whether inland or foreign, when purporting to be made by a Notary Public, should be *primâ facie* evidence that the Bill had been dishonoured.

As regarded Section 14, which gave power to sue on lost negotiable instruments, MR. MAINE could not add any thing to what the Select Committee had observed with reference to the question whether the silence of the existing Code of Civil Procedure, which merely provided that when a suit was founded on a document, such document should be produced in Court when the plaint was presented, took away the general power of Indian Courts, which were at once Courts of Law and Equity, to grant relief upon a lost instrument on proper indemnity being given by the plaintiff against the claims of any other person on the instrument. MR. MAINE agreed in the decision at which the Select Committee had arrived, that for the present, and until the whole matter was made clear by the amended Code of Civil Procedure, all doubt in the case of documents so important as Bills of Exchange and Promissory Notes should be removed by the retention of Section 14.

A very important change which the Committee had made was as regarded Section 15, which provided that " every assignee, by endorsement or otherwise, of a policy of marine insurance, or of a policy of insurance against fire, in whom the property in the subject insured shall be absolutely vested at the date of the assignment, shall have transferred to and vested in him all

rights of suit as if the contract contained in the policy had been made with himself." At the discussion which occurred in Council when the Bill was referred to a Select Committee, Mr. Bullen had expressed a wish that the principle of the Bills of Lading Act (No. IX of 1856) should be extended to policies of assurance, and the Council had since had a communication from the Calcutta Chamber of Commerce expressing the same desire. The anomaly to be remedied was this. If a Bill of Lading were endorsed, the endorsee, to whom the property in the goods therein mentioned passed, had transferred to and vested in him all rights of suit in respect of the goods, as if the contract contained in the Bill of Lading had been made with himself. But if the same goods were insured, and the policy of insurance had been endorsed over to him, the assignee of the goods could only sue in the name of the person insured, or the agent or insurance broker who nominally effected the insurance. So in the case of fire policies, the right and property in the goods might have passed to the vendee; but, under the present state of the law, if the goods had been insured and the policy assigned over to him, he could only sue in the name of the person effecting the insurance.

It had been objected that if the Indian Courts, which were at once Courts of Law and Equity, were to do their duty, they would put an end to those anomalies and subtleties which now prevailed. But, so far as MR. MAINE could see, they had not as yet done anything towards this object. The Committee had not included life-policies, because there might be circumstances which would render it dangerous to allow assignees of such policies to sue in their own names.

He had only one further remark to make. All bodies to which the Bill had been referred—the Chamber of Commerce, the Landholders' and Commercial Association, and the British Indian Association—while reserving those few points to which MR. MAINE had referred, had expressed their strong approval of the Bill, and their wish that it should be passed without delay.

The Motion was put and agreed to.

The Hon'ble MR. MAINE then, with the permission of His Excellency the President, moved the substitution in line 1 of Section 3, of the word "shall" for the word "may."

The Motion was put and agreed to.

The Hon'ble MR. MAINE then moved that the Bill as amended by the Select Committee, with the substitution just accepted by the Council, be passed.

The Motion was put and agreed to.

ARMS' ACT CONTINUANCE BILL.

The Hon'ble MR. MAINE also presented the Report of the Select Committee on the Bill to continue Act No. XXXI of 1860 (relating to the manufacture, importation and sale of arms and ammunition, and for regulating the right to keep and use the same, and to give power of disarming in certain cases) and for other purposes.

EXECUTION OF PROCESS (STRAITS' SETTLEMENT) BILL.

The Hon'ble MR. MAINE also presented the Report of the Select Committee on the Bill to extend Act No. XXIII of 1840 (for executing within the local limits of the jurisdiction of Her Majesty's Courts legal process issued by Authorities in the Mofussil).

CRIMINAL PROCEDURE ACT AMENDMENT BILL.

The Hon'ble MR MAINE also presented the Report of the Select Committee on the Bill to amend Act No. XXV of 1861 (for simplifying the procedure of the Courts of Criminal Judicature not established by Royal Charter).

The Council adjourned till the 2nd March.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Dept. (Legislative.)

CALCUTTA,
The 23rd February 1866.

Military Orphan Press.—No. 102 L. C.—24-2-66.—180.

Abstract of the Proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 2nd March, 1866.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding.*
His Honour the Lieutenant-Governor of Bengal.
His Excellency the Commander-in-Chief.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble G. Noble Taylor.
The Hon'ble Colonel H. M. Durand, C.B.
The Hon'ble Mahárájá Vijayaráma Gajapati Ráj Bahádur of Vizianagram.
The Hon'ble Rájá Sáhib Dyál Bahádur.
The Hon'ble W. Muir.
The Hon'ble Mahárájá Dhiraj Mahtab Chand Bahádur, Mahárájá of Burdwan.
The Hon'ble D. Cowie.
The Hon'ble Stewart St. John Gordon.
The Hon'ble George Ross.

PUBLIC MUSEUM (CALCUTTA) BILL.

The Hon'ble MR. MAINE, in moving for leave to introduce a Bill to provide for the Establishment of a Public Museum at Calcutta, said that this Bill was intended to carry out an agreement which had been arrived at between the Government of India and a very distinguished body, the Asiatic Society of Bengal. The object of the agreement was to transfer a part of the collections of the Society to Trustees, and to devote them under certain conditions to public use. Since the first overtures towards this arrangement were made, there had been considerable delay in giving effect to it, delays attributable to various causes. The latest difficulty which had arisen grew out of the Society being not unnaturally desirous that the Bill which carried out the agreement should bear more or less resemblance to the English Statute which regulated the relations of the British Museum with the

Government of Great Britain. But the proposal of the Society, MR. MAINE thought, was founded on a mistaken analogy between the powers of this Council and those of Parliament, and some of the terms proposed were inconsistent with the relations, in matters of finance, of the Governor-General in Council to the Home Government of India. This had been pointed out to the Society, and MR. MAINE understood that they were satisfied with the Bill as it had now been framed.

The Bill provided in the first instance that the Governor-General of India in Council should cause to be erected at the expense of the Government of India a suitable building in Calcutta, on or near the site now occupied by the Small Cause Court, to be devoted in part to collections illustrative of Indian archæology and of the several branches of Natural History, in part to the preservation and exhibition of other objects of interest, whether historical, physical or economical, in part to the records and offices of the Geological Survey of India, and in part to the fit accommodation of the Asiatic Society of Bengal and to the reception of their Library, Manuscripts, Maps, Coins, Busts, Pictures, Engravings and other property.

It was further proposed to create a Board of Trustees, who were to be the Chief Justice of the High Court of Judicature at Fort William in Bengal, the Bishop of Calcutta, the Vice-Chancellor of the University of Calcutta, the Secretary to the Government of India in the Home Department, four other persons to be nominated by the Governor-General of India in Council, the President of the Asiatic Society of Bengal, and three other members of the said Society for the time being, to be nominated by the Council of the said Society. These Trustees were to be a Body Corporate with perpetual succession. The Bill went on to provide that the Corporation should have the necessary powers to make bye-laws, hold property, and so forth. Such collections of the Asiatic Society as were intended to be transferred to the Trustees were to be removed to the new building as soon as it was completed so far as to be able to receive them.

The Society was to have the exclusive possession of such part of the new building as should be set apart by the Trustees for its accommodation, and the Trustees were not to interfere with the present exclusive control which the Society now had over their Library, Manuscripts, Maps, Coins, Busts, Pictures and Engravings. The Society was, whenever this change took place, to be at

liberty to lease or sell their present house. In case of the determination of the trust, the Society was to be at liberty to reclaim their collections.

These were the principle provisions of the Bill which he now moved for leave to introduce.

The Motion was put and agreed to.

RELIGIOUS ENDOWMENTS COMMITTEES' BILL.

The Hon'ble MR. MAINE, in moving for leave to introduce a Bill to empower the Committees appointed under the seventh Section of Act No. XX of 1863 to raise the costs and expenses incurred in the performance of their duties, and for other purposes, said that this was a small matter. The Act which it was the object of this Bill to amend, which was passed at the instance of his Hon'ble friend the Lieutenant-Governor of Bengal, and than which no measure has received more public approval, was an enactment by which the Government had divested itself of all concern with the management of Native religious endowments.

Under the Act two bodies were contemplated: the Trustees or Managers who were in charge of the several Mosques and Temples, and the Committees appointed to superintend those Trustees and Managers, and to take the place of the Board of Revenue under the Regulations thereby repealed.

In order to carry out that duty effectually, it was necessary for the Committees to keep accounts, to provide establishments of clerks and messengers and to be able to raise funds for the purpose of paying for these establishments. But the Act contained no provision enabling the Committees to raise such funds.

As far as Bengal was concerned, there was a little difficulty, because the Board of Revenue, when the Act was passed, was in possession of funds belonging to the religious establishments, and had transferred them under Section 12 to the Committees. It appeared however that, in Madras, before the Act became law, the Government had transferred all such property to the Trustees and Managers, so that the Committees had no property in hand, and no power to raise thereout the expenses necessarily incurred in the performance of their duties. The Bill which he proposed would enable the Committees to raise or cause to be raised the money required for the purpose.

As the Act was under revision, one other amendment had better be made. The Act provided that the members of the Committees were to hold office for life. But it appeared that some cases had occurred in which the members of a Committee wished to resign their appointments, and no provision was made for filling up the vacancies which would be caused by such resignations. The Bill authorized the appointment of new Committee-men, not only in the cases above mentioned, but also in that of a member leaving India.

The Motion was put and agreed to.

OUDE LIMITATION BILL.

The Hon'ble MR. MUIR introduced the Bill to exempt certain suits in Oude from the operation of the rules of limitation in force in that Province, and moved that it be referred to a Select Committee, with instructions to report in a fortnight. He said that when he obtained leave to introduce the Bill, he had explained at length the reasons for it and the nature of the Bill. A copy of the draft Bill had since been referred to the Chief Commissioner of Oude, and his opinion, as also that of the Financial Commissioner, had been invited; and one or two amendments had been made in the draft in conformity with suggestions received from those officers. MR. MUIR need only refer to one point in the second Section which related to the redemption of mortgages. The Section provided that, when a mortgagee shall, by virtue of a mortgage executed before the 13th February 1844, or twelve years before the annexation of the Province, have obtained possession of land comprised in his mortgage, the mortgagor "shall not bring a suit to redeem the mortgage of such land, any subsequent acknowledgment of the title or right to redeem of the mortgagor, or of any person claiming through him, notwithstanding." The proviso here made had reference to Clause 15, Section 1, Act XIV of 1859, in which it was provided that the period of limitation was thirty years from the date of mortgage, or from the acknowledgment of the title or right of redemption of the mortgagor. If this point had not been specially provided for, any acknowledgment of the right of redemption might have been pleaded as a new period of limitation. No suit would lie on account of any mortgage executed prior to the 13th February 1844, whatever admissions might subsequently have been made in respect of it. The only exception to this rule was in a class of cases which, at the instance of the Chief Commissioner, had been provided for by a new Section (3). Wherever, by the mortgage deed, a period had been fixed within which the right of redemption

might be exercised, and that period did not expire till after the date of annexation, a suit would lie notwithstanding that the mortgage had been executed prior to the 14th February 1844.

These provisions were introduced in conformity with agreements which had been made with the Chief Commissioner by most of the Land-holders who held under *Sunnud*. They were in themselves reasonable, and by their adoption the law would now be brought into accord with the administrative rules of the Province.

With these remarks MR. MUIR begged to introduce the Bill, and to move that it be referred to a Select Committee, with instructions to report in a fortnight.

The Motion was put and agreed to.

ARMS' ACT CONTINUANCE BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill to continue Act No. XXXI of 1860 (relating to the manufacture, importation and sale of arms and ammunition, and for regulating the right to keep and use the same, and to give power of disarming in certain cases) and for other purposes, be taken into consideration. He said that he would state to the Council the sole amendment which the Committee proposed to make. The Act, it would be remembered, provided for two systems with respect to arms—one was in force only in certain proclaimed Districts, while the other took effect all over India. Under the second system, licenses were necessary for the lawful carrying of arms; but there were certain exemptions from the necessity of taking out these licenses. It was to these exemptions that the sole amendment of the Committee applied. The original Act allowed persons to be exempted by order of the Local Government, and the word "persons" had been construed by those Governments as permitting them to exempt classes, such as Europeans and Parsees. Possibly this was going a little beyond the letter of the law. But the Committee proposed to legalize the practice by inserting the word "classes" in the last clause of the Section. The Committee also proposed to allow the exemption of Districts and parts of Districts, which was a concession to the opinion expressed by his Hon'ble friend Mr. Muir, when the Bill was last before the Council. It was intended, of course, to prevent the mischief of wholly disarming parts of British India which abutted on Native States, and

where the inhabitants were exposed to violence and outrage from the subjects of States with a weaker administration and police than our own.

Since the Bill had been brought before the public, MR. MAINE had heard or read complaints of the original Act, which contrasted rather singularly with the anticipations entertained when it was under discussion. It was said that the Act was not sufficiently stringent. Now, upon paper and as a piece of legislation, the Act was extremely severe. The only way in which its stringency could be increased, would be by withdrawing the discretion given to the Local Governments, and MR. MAINE would be very loath to do that. If he did, he could not but fear that a measure of which the operation, however wholesome, was at best invidious, might become odious. The point was for the Local Government to consider, and it was just possible that, having regard to the feeling which prevailed when it was originally passed, they might have administered it somewhat laxly and leniently. It had been alleged that sales of improved arms constantly took place. As they were alleged to be effected without the knowledge of the Government, it was of course impossible from the nature of the case for the Government to pronounce an opinion. But it did happen that intelligence of such sales or attempted sales now and then reached the Supreme and other Governments; and considering the sensation which such attempts to sell obviously created, and the promptitude with which information concerning them was apparently conveyed to the Government, MR. MAINE could not help doubting the existence of the practice at least to any considerable degree. The matter, however, was one which would necessarily receive the careful attention of all the Governments in India.

The Hon'ble MR. GORDON said that, as the Hon'ble Member who had introduced this Bill had, on a former occasion, referred to some communication which he (MR. GORDON) had made, he thought he had better explain to the Council the difficulty which he had at first felt in assenting to this Bill, and the way in which that difficulty had been removed.

The first twenty-five Sections related to the whole of India. They dealt with the manufacture and possession of cannon, and the manufacture and sale of ammunition and small arms. Then came Section 26, which forbade the carrying of arms. But it did not make the carrying of arms an offence. It merely said that, if a man carried arms, he might be deprived of them.

Another Section went on to say that, if a Magistrate had reason to believe that a person had arms in his possession, and was likely to make an unlawful use of them, he might cause the house of that person to be searched, and seize any arms found there, and detain them as long as might be deemed necessary.

Those were the general provisions of the law as applicable to the whole of India. But Section 36 applied to certain excepted Districts, where for some reasons the Local Government had ordered that the people should be disarmed. In those Districts the law was exceedingly stringent. The simple possession of arms in a proclaimed District was forbidden, houses might be searched, and any arms found there might be confiscated and the owners punished. In an ordinary District, the simple possession of arms was not an offence, nor the purchase of arms, nor even the importation of small quantities of arms for private purposes.

Therefore there were two *régimes*. One was lenient and the other was exceedingly severe. But the Act did not provide any special means for explaining, either to the Magistrate or to the people, under which of these two *régimes* they lived. The proclaimed Districts were those Districts which were proclaimed either under the provisions of Act XXXI of 1860, or under the provisions of a former Act which it had repealed,—Act XXVIII of 1857; and in order to ascertain whether any particular place was subject to these stringent rules, or to the very mild ones which he had endeavoured to describe, it was necessary for the Magistrate to hunt through the whole of the Gazettes published since 1857, to ascertain, *first*, whether that place had been proclaimed, and *secondly*, whether that proclamation had or had not been withdrawn.

Of all laws it was least expedient that there should be any difficulty in ascertaining whether a criminal law was or was not in force. MR. GORDON had felt some difficulty, therefore, in assenting to the perpetuation of the Arms' Act without some express provision to remove this serious objection to it as it stood. But he understood that the Executive Government had undertaken to direct that the notifications should be periodically re-published in the Government Gazettes of the several Administrations. That being so, the only objection he had felt to the passing of the Bill had been removed.

The Hon'ble MR. MAINE said that his Hon'ble friend (Mr. Gordon) had mentioned to him the difficulty which he had felt, and he (MR. MAINE)

was authorized to state that the matter had been discussed by the Executive Government, and that the announcement wished by his Hon'ble friend would be made by the Local Governments.

The Motion was put and agreed to.

His Honour the LIEUTENANT-GOVERNOR said that there was a slight verbal alteration which he begged to suggest. It was the substitution, in line 5 of Section 1, of the words "the Act last hereinbefore mentioned" for the words "such Act."

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

EXECUTION OF PROCESS (STRAITS' SETTLEMENT) BILL.

The Hon'ble MR. MAINE also moved that the Report of the Select Committee on the Bill to amend Act No. XXIII of 1840 (for executing within the local limits of the jurisdiction of Her Majesty's Courts legal process issued by authorities in the Mofussil) be taken into consideration. He said the Committee had altered the title of the Bill, which would now explain its object. It was a very trifling matter. Since the Bill was introduced, the Code of Civil Procedure had been extended to all Her Majesty's Courts in India except the Court of Judicature in the Straits' Settlement. That Code provided for service of summons when the defendant resided within the jurisdiction of any Court in the Territories to which it applied, other than that in which the suit was instituted. But people in the Straits' Settlement preferred their old procedure, and the Government of India did not therefore think it desirable to extend the Code to that Settlement. The result was that, as the law now stood, there was no possibility of executing in the Straits' Court process issued by any other Court in India. Moreover, the Bill, as drawn, referred to the Supreme Courts as being in existence, and as having a procedure identical with that of the Straits' Court. For these and other reasons some alteration was necessary. As the Committee had finally settled the Bill, it was simply a Bill to enable service in the Straits' Court of process issued by any of the other Courts in British India, and service in the latter Courts of process issued by the Straits' Court.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

CRIMINAL PROCEDURE CODE AMENDMENT BILL.

The Hon'ble MR. MAINE also moved that the Report of the Select Committee on the Bill to amend Act No. XXV of 1861 (for simplifying the procedure of the Courts of Criminal Judicature not established by Royal Charter) be taken into consideration. He said that the Bill had originally been limited to certain amendments of the Code of Criminal Procedure strongly urged upon the Government of India by the three Governments of Bengal, Madras and Bombay. The Committee had had the advantage of the Hon'ble Mr. Gordon's experience, who had pointed out several other offences which fell precisely under the reasoning in virtue of which the Bill had been drawn. At Mr. Gordon's instance, the Committee had agreed to add to the offences contemplated in the Bill the following :—

Knowingly disobeying any quarantine rule :

Driving or riding on a public way so rashly or negligently as to endanger human life, &c :

Dealing with fire or any combustible matter so as to endanger human life, &c :

So dealing with any explosive substance :

A person omitting to take order with any animal in his possession, so as to guard against danger to human life or of grievous hurt from such animal :

Committing a public nuisance ; and

House-trespass.

It was obvious that the inconveniences of removing the cognizance of the offences first mentioned in the Bill from the minor Magistrates arose equally in the case of the offences to which the attention of the Committee had been drawn : they were petty offences, and were frequently committed. It was a great hardship on those whose evidence was necessary for the conviction of the offender to be dragged to a distance for the purpose of substantiating charges of this nature, and it was even more undesirable that such offences should be hushed up from the fear of encountering these hardships.

Since it had become known to the public that there was an intention of amending the Code of Criminal Procedure, a rather remarkable number of communications on the subject had been received by MR. MAINE, either privately or in the Legislative Department. It was evident that there were considerable defects in the Schedule to the Code ; and on the whole MR. MAINE thought that a case was made out for its early revision. Nothing could be more inex-

pedient than the premature alteration of bodies of law which were intended to be comparatively permanent. But here the weight of opinion in favour of some revision seemed to MR. MAINE too great to be withstood. The revision of the Code of Criminal Procedure was not, it must be remembered, quite the same thing as the revision of the Penal Code. The Penal Code was based on principles something like universal. But the Code of Criminal Procedure was directed to the immediate convenience of the persons by whom and for whom it was administered. If it did not serve that convenience, a presumption instantly arose in favour of the necessity for modifying it. On the whole, he thought the Council might usefully devote itself in the next sittings to the reconsideration of this Code. In all probability, before it became law, it would be referred to the Indian Law Commissioners at home.

The Motion was put and agreed to.

The Hon'ble MR. GORDON said that he had to move an amendment not of a very radical character. There were some offences which, he thought, might well be added to Section 1 of the Bill. He would take the last in order first, as it was most important, *viz.*, House-trespass in order to the commission of an offence punishable with imprisonment, or where the offence intended to be committed was theft. The Bill proposed to invest any Magistrate with the power of trying Theft in a dwelling-house, and the amendment by the Committee proposed that House-trespass should be made cognizable by any Magistrate. But House-trespass in order to the commission of theft was part of Theft in a dwelling-house, and might almost be described as an attempt to commit that offence. As the greater contained the less, if any Magistrate was authorized to punish Theft in a dwelling-house, he should also have the power of disposing of the smaller offence, namely, House-trespass in order to the commission of theft.

Another part of the Schedule to the Act to be amended allowed a Magistrate of the first Class to try one of the most difficult and important class of cases that could possibly be found (Criminal breach of trust by a servant, banker or agent), which offence was punishable with transportation for life.

If therefore a Magistrate of the first Class was competent to try such an offence as that, any Magistrate was certainly competent to try the offence which he (MR. GORDON) wished to see added to Section 1.

The other offences stood on different grounds, *viz.*, absconding to avoid service of summons or other proceeding from a public servant, and non-attendance

in obedience to an order from a public servant. These offences peculiarly required to be dealt with summarily. A man might lose his cause by the non-attendance of his witnesses. But he seldom would prosecute a witness, because he might require his evidence again in a further stage of the same cause.

The Civil Courts therefore must see the law enforced. There must be a complaint, and a ministerial Officer must be sent to lay the complaint before a Magistrate. MR. GORDON had known cases where the witnesses and accused had to travel a hundred miles before their case could be decided, and then a hundred miles back again to their homes.

Under these circumstances the Court could not always spare the services of these Officers for so long a time, and the persons injured were often unwilling to prosecute, so this class of offences, although exceedingly common, were seldom in fact punished, and positive injustice must in consequence often result. These offences were not visited with heavy punishment. Six months' simple imprisonment or 1,000 Rupees fine was the maximum, and in practice the punishment awarded was generally very slight indeed. These cases were simple in their nature, and well within the competence of any Magistrate.

He (MR. GORDON) would therefore move the amendment of which he had given notice, *viz*:—that the numbers 172 and 174 be introduced after the word "Sections" in Section 1 of the Bill, that the word "and" be omitted before the number 448, and that the word and number "and 451" be introduced after the number "448" in the same Section.

The Hon'ble MR. MAINE had no objection to the Hon'ble gentleman's amendments. It should be understood that they had not been rejected by the Committee, but would probably have been accepted by it, if they had been submitted to it by the Mover. He would make one general remark about the Schedule to the Code. Its defects, wherever they occurred, seemed to have arisen from the Legislative Council having proceeded on a principle only partially true. That principle was that when the punishment allotted to an offence was heavy, the congnizance of that offence should be reserved to a higher Magistrate. This was all very well as a rough rule; but it required to be modified by the consideration that, in respect of certain offences for which the maximum punishment was extremely high, the degree of culpability evinced by the Commission might vary very widely. The contingency that an offence punishable by a heavy

maximum penalty might be perpetrated under circumstances which called for a very slight punishment did not appear to have been sufficiently provided for.

The Motion was put and agreed to.

The Hon'ble MR. MAINE then moved that the Bill as amended be passed.

The Motion was put and agreed to.

JUDGES' COMMISSIONS BILL.

The Hon'ble MR. MAINE said that, if His Excellency would allow him, he would move for leave to introduce a Bill which was not entered in the List of Business. He thought that, if he mentioned the nature of the Bill, the Council would unanimously agree with him that there was occasion for it. Under Act XIII of 1865, which amended the Criminal Procedure of the High Courts, a mode was provided for the exercise of the Courts' jurisdiction in the Mofussil by Judges deputed under Commissions of the Governor General of India in Council. It was at first intended to organize a system of Circuits such as there was in England. But after consultation with the Chief Justice, MR. MAINE thought it would be premature to organize regular Circuits in the present state of the Courts' business and of the means of communication through the country. Accordingly, for a system of Circuits, there was substituted a system of tours of inspection by Judges who visited the Mofussil with the view of examining into the working of the subordinate Courts. These Judges were not under Commission, but it had been arranged that, whenever the High Court thought that the ends of justice would be served by trying a European British subject at a distance from the Presidency, a special Commission should issue. In short a system of special Commissions had been temporarily substituted for a system of Circuits. On English analogies, however, which required that Commissions should be signed by Her Majesty, these Commissions would have to be signed by the Governor-General and all the Members of his Council.

There would have been no difficulty if the system of Circuits had been inaugurated, and if the Commissions were issued at regular intervals. But now it was impossible to know when the necessity for issuing the Commissions would arise, and the Governor-General and the Members in Council might then be absent from the Presidency, and accordingly it was the object of the present Bill to relieve the Governor-General and the Members in Council from the duty of signing the Commissions. It was proposed that a seal should be made,

that it should be kept in the custody of whomsoever the Governor-General in Council might appoint, and that the Commissions should be stamped by order with such seal by the person so appointed, and, when so stamped, should have the same force and effect as if they had been signed by the Governor-General, and the Members in Council. A telegraphic communication to the Secretary to the Government of India in charge of the Calcutta Office would be sufficient warrant to affix the seal.

The Motion was put and agreed to.

ASSAM COMPANY'S BILL.

The Hon'ble MR. MAINE then presented the Report of the Select Committee on the Bill to repeal Act No. IV of 1855 (for incorporating for a further period, and for giving further powers to the Assam Company).

PLEADERS' AND MOOKHTARS' ACT EXTENSION (N. W. P.) BILL.

The Hon'ble MR. MAINE also presented the Report of the Select Committee on the Bill to extend Act No. XX of 1865 (to amend the law relating to Pleaders and Mookhtars) to the Sudder Court of the North-Western Provinces.

INDIAN COMPANIES' BILL.

The Hon'ble MR. MAINE also presented the Report of the Select Committee on the Bill for the incorporation, regulation and winding up of Trading Companies and other Associations.

REGISTRATION ACT AMENDMENT BILL.

The Hon'ble MR GORDON presented the Report of the Select Committee on the Bill to amend Act No. XVI of 1864 (to provide for the Registration of Assurances).

The following Select Committee was named :—

On the Bill to exempt certain suits in Oude from the operation of the rules of limitation in force in that Province—The Hon'ble Messrs. Maine and Grey, the Hon'ble Colonel Durand and the Mover.

The Council adjourned till the 9th March.

WHITLEY STOKES.
Asst. Secy. to the Govt. of India,
Home Dept. (Legislative.

CALCUTTA ;
The 2nd March 1866.

Govt of India, Central Printing Office—No 161 L D.—15 1 86—70

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Government House on Friday, the 9th March 1866.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding*.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Colonel H. M. Durand, C.B.
The Hon'ble Mahárajá Vijayaráma Gajapati Rāj Bahádur of Vijianagram.
The Hon'ble Rájá Sáhib Dyál Bahádur.
The Hon'ble W. Muir.
The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.
The Hon'ble D. Cowie.
The Hon'ble George Ross.

PUBLIC MUSEUM (CALCUTTA) BILL.

The Hon'ble MR. MAINE introduced the Bill to provide for the Establishment of a public Museum at Calcutta, and moved that it be referred to a Select Committee, with instructions to report in a fortnight. He said that he had fully described to the Council last week the arrangement which had been come to between the Asiatic Society and the Government of India. Even now he was rather afraid and there was something in the language of the Bill which would require to be corrected, as not being quite consistent with the financial position of the Government. The Bill, in its present form, had received the assent of the Society, and if the Council would allow it to go to Committee, any necessary alteration could easily be made in its phraseology.

The Motion was put and agreed to.

RELIGIOUS ENDOWMENTS COMMITTEES' BILL.

The Hon'ble MR. MAINE also introduced the Bill to empower the Committees appointed under the seventh Section of Act No. XX of 1863 to raise the costs and expenses incurred in the performance of their duties, and for other purposes, and moved that it be referred to a Select Committee, with in-

structions to report in a fortnight. He said that the Bill had been necessitated by the speed with which the Government of Madras had transferred all the property belonging to religions institutions to the Trustees or Managers of the several Mosques and Temples superintended by the Committees appointed pursuant to Act XX of 1863. It was supposed, when that Act was passed, that a certain amount of property would remain in the hands of the Committees which would be sufficient to defray the expenses necessarily incurred by them in the performance of their duties—duties for neglecting which they were liable to be sued. But in Madras, before the Act was passed, all the property was transferred to the trustees; and the consequence was that the Committees had nothing to pay for Clerks and Chuprassees. Section 1 of the Bill accordingly provided as follows:—"It shall be lawful for every such Committee from time to time to pay or cause to be paid out of the income, or to raise or cause to be raised out of the Capital, of the property of any religious establishment under their superintendence or management, such sums of money as shall be required to defray the costs and expenses incurred from time to time in relation to or concerning such superintendence or management. Every Trustee, Manager, Superintendent and other person in whom all or any part of such property may be vested shall be bound to make such payments out of the said income, and to execute such conveyances of the said capital as may be necessary to effect the purposes of this Act; and, in default of compliance with any of the provisions of this Section, he shall be liable to a fine of one hundred rupees."

And then Section 2 provided that no person taking under any sale, mortgage or other disposition purporting to be made under the powers conferred by this Act, should be bound to enquire into the necessity or expediency thereof, or to see that no more than was required was raised.

In the absence of a law for all India, MR. MAINE really did not know whether that declaration was required in the Mofussil, but it was certainly needed in the Presidency Towns, where what was technically known as the doctrine of Notice, was fully understood and applied. He thought under these circumstances that he should best carry out the intention of the framer of the original Act by introducing this Section.

As he had explained to the Council last week, Section 3 was required to correct an omission in Act XX of 1863, which makes no provision for the appointment of a new Committee-man in the place of any member of a Committee wishing to resign. The Bill authorizes the appointment of a new Committee-man, not only in this case, but also in that of a member leaving India.

The Motion was put and agreed to.

JUDGES COMMISSIONS' BILL.

The Hon'ble MR. MAINE also introduced the Bill to relieve the Governor-General of India in Council from the duty of signing the Commissions mentioned in Sections 22 and 44 of the High Courts' Criminal Procedure Amendment Act, 1865, and moved that it be referred to a Select Committee with instructions to report in a fortnight. He said that this Bill explained itself. It proposed to provide that a seal should be made at the expense of the Government of India with this inscription 'The seal of the Governor-General of India in Council,' and should be kept in the custody of such person as the Governor-General of India in Council should from time to time appoint in that behalf, and that the Commissions respectively mentioned in Sections 22 and 44 of 'The High Courts' Criminal Procedure Amendment Act, 1865,' might be stamped with such seal by such person as the Governor-General of India in Council should from time to time appoint in that behalf; and when so stamped should be equally valid and effectual as if they had been signed by the Governor-General of India and the members of his Council.

Section 22 of the High Courts' Criminal Procedure Amendment Act, 1865, empowered the Governor-General of India in Council to authorize the Judges of a High Court to be sent under his Commission into the Mofussil; and Section 44 provided for the appointment of a Barrister-at-law to hold sittings at certain places under the Commission of the Governor-General in Council.

The Motion was put and agreed to.

PLEADERS AND MOOKHTARS' ACT EXTENSION (N.-W. P.) BILL.

The Hon'ble MR. MAINE also moved that the Report of the Select Committee on the Bill to extend Act No. XX of 1865 (to amend the law relating to Pleaders and Mookhtars) to the Sudder Court of the North-Western Provinces be taken into consideration. He said that the Committee had no amendments to suggest. The Sudder Court of the North-West had expressed their entire concurrence in the Bill. He, however, had felt considerable doubt as to whether he should proceed with it, because he saw that the establishment of a High Court for the North-Western Provinces had been gazetted, although whether or not the Letters Patent had been signed he was unable to say. Still it might happen that the High Court when established might wish merely to continue the rules which the Sudder Court had made; and on the whole he thought it better that the Bill should be passed.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill he passed.

The Motion was put and agreed to.

INDIAN COMPANIES' BILL.

The Hon'ble Mr. MAINE also moved that the Report of the Select Committee on the Bill for the incorporation, regulation, and winding up to Trading Companies and other Associations be taken into consideration. He said that this was a much more important measure than those which he had just introduced. It had had the good fortune of receiving the fullest approval of the public bodies to which it had been referred. Most of them had sent it back with an expression of their opinion that the Bill was desirable in the interests of the community, and that it should be passed with as much despatch as possible. There were two exceptions, not to the approbation expressed, but to the absence of suggestion. The British Indian Association had recommended that the Inspectors who might be appointed under certain Sections of the Bill to examine into the affairs of Joint Stock Companies should be bound to secrecy. The suggestion was founded on a sound idea, for it was not desirable that the Inspectors should gossip about the results of their inspection; but MR. MAINE was sorry to say that he thought it quite impracticable. The usual expedient for securing secrecy was an oath; but it was open to the objections to which all oaths were open, that they bound the conscience of the swearer little more than his sense of duty would have bound him already, and that as they were a burden on the conscience, they often prevented a scrupulous person from undertaking the duty for which he was most fitted. MR. MAINE thought, moreover, that the Association overrated the evils of publicity through the indiscretion of Inspectors. There was doubtless a point in the history of every trader or Company at which it was against their interest that the exact state of their affairs should be known. But by the very nature of the case, this point must have been passed before Inspectors were appointed. Something must have occurred to throw doubt on the prosperity of the Company, or there would have been no inspection. If these doubts were unfounded, the sooner the truth was known the better for the Company. If there was ground for them, the time when everything would be divulged could not, under the circumstances, be far distant. MR. MAINE must add that, so far as England was concerned—he could not speak with confidence of India—the class of people employed on inspections were very little likely to betray confidence. They were professional accountants, and were no more in the habit of talking of the affairs of the Company whose books they examined, than medical men were in the habit of talking of the diseases of their patients. They made it a point of honour not to do so, and their business depended on their continued discretion. The Land-

holders Association' had called attention to an important point which had been much discussed by the Committee. They had observed on the risk to which policy-holders were exposed by the conversion under the Bill of Unlimited into Limited Life Insurance Companies. The Bill provided for the consent of a certain portion of the shareholders being obtained. But the Association remarked, with great truth, that the persons most interested were not the shareholders, but the policy-holders. Now MR. MAINE held strongly that, where a Life Insurance Company had agreed to pay the amount secured on a policy on a certain contingency, its liability being unlimited at the time of making the contract, it could not limit the liability either of the aggregate association or of the individual shareholders by simply registering itself as a limited Company. The shareholders remained responsible to the policy-holders to their last shilling or rupee. But it was true that the policy-holders were placed in a considerable practical difficulty. For from the moment of the conversion of an unlimited into a limited Company the policy-holders must either discontinue his payment of premiums, in which case his policy became void, or he must continue to pay these premiums to the limited Company; and in that case he would run much risk of being held by a Court of Justice to have accepted the security of the limited, in lieu of that furnished by the unlimited, Company. The Association had admitted the difficulty of finding a mode of obviating this injustice. To ask the consent of the policy-holders would be simply nugatory, for policies were generally held under trust, and the trustee would surely refuse his consent—indeed it would be his duty to do so. The case of an Unlimited Life Insurance Company transmuting itself into a Limited Company, did not, so far as MR. MAINE could judge from the reports, appear to have occurred. But the case of two Companies amalgamating and of the policy-holders objecting to the new security was known to have happened; and it seemed that the only way in which they could protect themselves from constructive acquiescence in the liability of the new Company was by paying all their premiums under protest,—a most inconvenient course. MR. MAINE thought that the practical requirements of the case were met by the amendment which the Committee proposed to introduce. The Committee proposed to provide that no Unlimited Life Assurance Company existing at the date of the passing of the Act, should be allowed to transmute itself into a Limited Liability Company. Practically the only Companies formed under the Act would be limited, for one of the great objects of the Act was to empower Natives to form Life Assurance Companies, which they would only enter into on condition of their liability being limited. The great majority of Insurance Companies now doing business in India were branches of English Associations incorporated under English law.

One point remained, to which he would call the attention of the Council, because it was a departure from the English Statute, though it was in harmony with the Indian Act of 1857 now proposed to be superseded. The obligation of shewing a balance-sheet and having the accounts audited was in the English Act part of table A, and therefore could be waived by intending shareholders. But in India, considering the distance of many of the shareholders from the theatre of the Company's operations, and their general incuriousness, MR. MAINE thought it should be made a positive duty incumbent on the Directors to shew an annual balance-sheet and to submit to an annual audit. The Bill, therefore, followed Act XIX of 1857 in requiring this, and it further made the omission to do so penal.

The Motion was put and agreed to.

The Hon'ble MR. MAINE said that he had an amendment to propose which was not on the List of Business. Section 65, which related to the recovery of penalties under the Act, incorporated by reference two Acts of the Indian Legislature. The Committee, however, had introduced at the end of the Bill a series of Sections providing expressly for the recovery of penalties. He therefore begged to move that Section 65 be omitted and the necessary changes made in the numbers of the subsequent Sections.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

ASSAM COMPANY'S BILL.

The Hon'ble MR. MAINE also moved that the Report of the Select Committee on the Bill to repeal Act No. IV of 1855 (for incorporating for a further period, and for giving further powers to the Assam Company) be taken into consideration. He said that this was a mere matter of form. The Bill had simply been necessitated by a Section in a private Act of the English Parliament which require that this Council should repeal the old Act of the Indian Legislature before the new Act of the English Parliament came into operation. The Committee had no modifications to suggest.

The Motion was put and agreed to.

The Hon'ble MR. MAINE then moved that the Bill be passed.

The Motion was put and agreed to.

PRIVATE WATER-COURSES' BILL.

The Hon'ble MR. MUIR presented the Report of the Select Committee on the Bill to provide for the appropriation of land required for private water-courses from Canals.

The following Select Committees were named:—

On the Bill to provide for the establishment of a public Museum at Calcutta—His Honour the Lieutenant-Governor, the Hon'ble Mr. Grey and the Mover.

On the Bill to empower the Committees appointed under the seventh Section of Act No. XX of 1863 to raise the costs and expenses incurred in the performance of their duties, and for other purposes—His Honour the Lieutenant-Governor, the Hon'ble Rájá Sáhib Dyál, the Hon'ble Mr. Muir and the Mover.

On the Bill to relieve the Governor-General of India in Council from the duty of signing the Commissions mentioned in Sections 22 and 44 of the High Courts' Criminal Procedure Amendment Act, 1865—The Hon'ble Mr. Grey, the Hon'ble Colonel Durand and the Mover.

His Excellency THE PRESIDENT said that, before adjourning the Council, he wished to express his sorrow for the loss of their colleague, the Hon'ble Stewart Gordon. He was sure that all would sympathize with him in this feeling. Mr. Gordon, though young in years, was selected, at the recommendation of Sir Bartle, Frere, as a fitting representative of the Bombay Presidency, and fully justified that Statesman's choice. He had gained, in his own service, the character of an earnest and able officer, and though he was but a short time among them, they had learnt to appreciate his merits. They deplored his loss, thus cut off in the middle of a career of usefulness and promise.

The Council adjourned till the 16th March.

CALCUTTA,
The 9th March 1866.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

I. I. C. P. O.—No. 44, L. D.—17-5-1906.—.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 16th March 1866.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Honour the Lieutenant-Governor of Bengal.
His Excellency the Commander-in-Chief.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble G. Noble Taylor.
The Hon'ble Colonel H. M. Durand, C.B.
The Hon'ble Rájá Sáhib Dyál Bahádur.
The Hon'ble W. Muir.
The Hon'ble D. Cowie.

OUDH LIMITATION BILL.

The Hon'ble MR. MUIR presented the Report of the Select Committee on the Bill to exempt certain suits in Oudh from the operation of the Rules of Limitation in force in that Province. He said that one or two slight alterations had been made in the Bill, a revised copy of which would be sent round. He would therefore postpone until next Friday his Motion that the Bill be passed.

INDIAN MARRIAGE ACT EXTENSION (HYDERABAD) BILL.

The Hon'ble MR. MAINE, in moving for leave to introduce a Bill to extend the Indian Marriage Act, 1865, to the Hyderabad Assigned Districts, said that it was necessary perhaps to explain shortly to the Council in what sense it was intended to extend that Act to the Hyderabad Districts. Those Districts were not part of the Territories for which the Council had full power to legislate. They were administered by the Governor General in Council in the name of the Nizam, and the legislative was mixed and combined with executive power. There were obvious reasons, however, why a Native State should not legislate even nominally for Christians in the matter of marriages, and therefore, by virtue of an Act of Parliament passed last Sessions, it was proposed to extend to Christian British subjects resident within the Assigned Districts the provisions of the Indian Marriage Act.

As regarded Native Christians who were subjects of the Nizam, the Governor General in Council, as representing the Nizam, had already provided by issuing an executive order applying Part V of the Act.

There was a third class which, if it existed at all, was not sufficiently extensive to require special provisions. He referred to Christians resident in the Assigned Districts, who were neither subjects of Her Majesty nor of the Nizam; as regarded those persons, MR. MAINE thought it would be better to leave their marriages to be dealt with according to the law of their domicile of origin.

The Bill was only a few lines long. It simply provided that "from and after the passing of this Act, the Indian Marriage Act, 1865, shall, so far only as regards Christian British subjects of Her Majesty, extend to the Hyderabad Assigned Districts."

The Motion was put and agreed to.

JUDGES' COMMISSIONS BILL.

The Hon'ble MR. MAINE also presented the Report of the Select Committee on the Bill to relieve the Governor General of India in Council from the duty of signing the Commissions mentioned in Sections 22 and 44 of the High Courts' Criminal Procedure Amendment Act, 1865.

PARTNERSHIP LAW AMENDMENT BILL.

The Hon'ble MR. MAINE also presented the Report of the Select Committee on the Bill to amend the Law of Partnership in India.

POST OFFICE BILL.

The Hon'ble MR. GREY presented the Report of the Select Committee on the Bill for the management of the Post Office, for the regulation of the duties of postage, and for the punishment of offences against the Post Office.

PUBLIC MUSEUM (CALCUTTA) BILL.

The Hon'ble MR. MAINE presented the Report of the Select Committee on the Bill to provide for the establishment of a Public Museum at Calcutta.

The Council adjourned till the 23rd March.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

CALCUTTA;
The 16th March 1866.

Government of India Central Printing Office—No. 5 (1) L. D.—23-6.1900.—30—Jos. C.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 23rd March, 1866.

PRESENT:

The Hon'ble H. Sumner Maine, Senior Ordinary Member, *presiding*.
His Honour the Lieutenant-Governor of Bengal.
His Excellency the Commander-in-Chief.
The Hon'ble W. Grey.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Colonel H. M. Durand, C. B.
The Hon'ble Mahárájá Vijayaráma Gajapati Ráj Bahádur of Vizianagram.
The Hon'ble Rájá Sáhib Dyál Bahádur.
The Hon'ble W. Muir.
The Hon'ble D. Cowie.

PRIVATE WATER-COURSES' BILL.

The Hon'ble MR. MUIR moved that the Report of the Select Committee on the Bill to provide for the appropriation of land required for private water-courses from Canals, be taken into consideration. He said that the Committee had received valuable suggestions from various Officers in the North-West Provinces and the Panjáb. He might specially mention Mr. C. B. Thornhill of the Allahabad Board, Colonel Dyas and Captain Crofton, and Mr. A. O. Hume, C. B., as having furnished many of the amendments which had been adopted. His learned friend the Assistant Secretary to the Council had also taken great pains with the Bill, and had simplified and improved it. In fact, nearly the whole of it had been entirely re-drawn by him.

Instead of providing for a proprietary transfer of the land, an accessorial right to form and maintain the water-course was all that was needed: and this change had simplified the measure.

An opportunity had also been given for objectors to lodge their complaints before the Collector, who was better qualified to judge of certain classes of objections than the Canal Officer; and power had been given to the Collector to hold the requisite investigations.

A Section had been added to provide for the adjustment of claims in cases of land occupied prior to the passing of the Bill.

The Lieutenant-Governor of Bengal had given his opinion that the Bill was not at present required for that Province. But the Lieutenant-Governor of the Panjáb had expressed a wish that it should be made applicable to the Panjáb and its dependencies. The Panjáb had therefore been substituted for Bengal.

Power was also given to the Local Government of other Territories to extend its provisions.

The Motion was put and agreed to.

The Hon'ble MR. MUIR moved that the following words be added to Section 11: "and shall forward to the Collector the plan and a copy of the memorandum."

Also that in Section 12, for the last clause, the following words be substituted:—

"If the Commissioner agree with the Canal Officer, the Commissioner's decision on the points in dispute shall be final. If the Commissioner disagree with the Canal Officer, the whole case shall be referred to the final decision of the Local Government."

Also that in Section 14, line 8, after the word "formed" the following words be inserted: "The Canal Officer shall enter upon the intervening lands and mark out the limits of the proposed water-course; and thereupon."

Also that in the same Section the last sentence be omitted.

Also that in Section 15, the word "Collector" be substituted for "Canal Officer" and "Officer."

Also that in the same Section, line 14, the words "enter upon the intervening lands and mark out the limits of the proposed water-course, and shall thereupon" be omitted after the word "shall."

Also that in Section 16, the word "Collector" be substituted for "Canal Officer."

MR. MUIR, in moving these amendments, explained that they had been rendered necessary by communications received from certain Officers after the Committee had submitted their report.

It had been objected that the Commissioner of the Division who, under the Bill as settled in Committee, was the final referee on points in which the Canal Officer and Collector differed, would be incompetent to form an opinion on

professional matters. It was therefore provided that where the Commissioner agreed with the Canal Officer his decision should be final; but where he differed, he should submit the case to the Government for its final decision.

Another amendment provided that the Canal Officer should enter upon and mark out the land, a process necessary as a preliminary to the adjustment by the Collector of the amount of compensation, rent or revenue.

The remaining amendments were intended to place the duty of requiring payment, and of arranging for the security of the rent, &c., in the hands of the Collector, as it had been pointed out by the Canal Officers themselves, that the Collector was in a better position than the Canal Officer to perform this duty effectively.

The Motions were severally put and agreed to.

The Hon'ble MR. MUIR then moved that the Bill as amended in Committee, with the additional amendments now approved, be passed.

The Motion was put and agreed to.

OUDH LIMITATION BILL.

The Hon'ble MR. MUIR moved that the Report of the Select Committee on the Bill to exempt certain suits in Oudh from the operation of the rules of limitation in force in that Province, be taken into consideration.

He said that the Bill had been forwarded for the opinion of the Chief Commissioner of Oudh before its introduction, and advantage had been taken of the observations of that Officer and of the Financial Commissioner, in the preparation of it as finally introduced. Since then, another communication had been received, in accordance with which some further amendments were made in Committee, to bring the measure into more entire conformity with the local law and with the agreements entered into by the Talukdars.

In reference to these agreements, MR. MUIR might add that they related to certain classes of cases in which villages held by Talukdars under *Sunnuds* were claimed by mortgagors. It had been held on the part of the Talukdars that the terms of the *Sunnuds* barred the claims of the mortgagors for redemption. But the Talukdars, admitting in such cases the equity of the mortgagor's title, had waived the claim which it was believed they possessed to bar the mortgagor's suit. In acknowledging this act, the Governor-General in Council had communicated to the Talukdars his high appreciation of the motives which had dictated this measure; and had added that "the sense of justice which had

thus let them to forego privileges which they considered to be conveyed by the *Sunnuds*, was most creditable to them, and was the best augury His Excellency could receive, that they would endeavour to discharge their important functions as landlords with integrity and consideration for the interests of those over whom they had been placed."

MR. MUIR added that the Secretary of State had communicated his entire concurrence in this view.

The Hon'ble COLONEL DURAND would not have approved of the Bill had not the Report of the Select Committee showed that, on the part of the Talukdars, there was a distinct and clear assent by them to the proposed measure. This had removed any doubt which he might have had with regard to the Bill. Their unanimous assent was much to their credit, much also to the credit of Mr. Wingfield, through whose influence no doubt that assent had been obtained. COLONEL DURAND concurred in the Report of the Committee, and was prepared to vote for the passing of the Bill. He repeated that much credit was due to the Talukdars for this concession, which would greatly increase the desire that the Government had always felt to be punctiliously scrupulous with reference to their rights and privileges.

The Motion was put and agreed to.

The Hon'ble MR. MUIR moved that the Bill be passed.

The Motion was put and agreed to.

POST OFFICE BILL.

The Hon'ble MR. GREY moved that the Report of the Select Committee on the Bill for the management of the Post Office, for the regulation of the duties of Postage, and for the punishment of offences against the Post Office, be taken into consideration. He said that the only parts of the Bill which seemed to have attracted much interest were those parts which related to the rates of postage.

The Council would recollect that, at a meeting of the Council some time ago, he (MR. GREY) had stated that the Government thought it desirable to call for reports with the view of ascertaining whether the present very low unit of weight did really, as was supposed by some persons, act as a bar to the use of the Post Office by the bulk of the population. The returns to that enquiry had not yet been received, but the Council would have learnt from the Report of the Select Committee, that the Government had intimated its willingness, if the result of the enquiry should be to show that this low unit did really

affect the use of the Post Office by the population at large, to introduce a modified scale of weight. He would only therefore add, now, that from no quarter had any spontaneous representation on the point been received.

As to the rates of newspaper postage, the Council would remember that when the Bill was introduced, he had said that although he was not able to acquiesce in the particular reason advanced for an increase of weight by those who had memorialized for it, he was yet prepared to think that the case on its own merits might deserve consideration. The result of an enquiry which he had made had established this to a greater degree than he should have supposed. Taking the postal statistics of two newspapers, *The Friend of India* and *The Englishman*, it appeared (excluding those copies sent by post beyond sea) that of the aggregate mileage over which the aggregate number of newspapers were conveyed in India, no less than 67 per cent. in the one case, and 71 per cent. in the other case, was by railway. Only 18 per cent. in the one case, and 20 per cent. in the other case, was by runners or boats, the remaining quantities being by mail-cart or horse-dâk. This result had satisfied the Select Committee of the expediency of allowing an increase to the weight of newspapers, and the Director General of the Post Office, he was able to say, was entirely of the same opinion.

As to the book-packet rates of postage, the alteration made by the Committee was to reduce the single unit of weight from 20 to 10 tolahs, thereby putting book-packets on the same footing as newspapers. It was reasonable to conclude that pretty much the same classes who received English newspapers received also book-packets, and therefore it might be safely assumed that the result which he had just mentioned, about the proportion carried by railroad, would be found to apply approximately also to book-packets. In making this alteration, we should be following in fact the English practice. In England, the newspapers which had special privileges were those which paid the stamp duty. Unstamped papers and books were exactly on the same footing. As the Section was drawn, however, the book-packet pastage in this country would be on a more liberal footing than it was in England, for it would admit of any class of articles whatever being sent by the Book-Post which the transmitter might be willing to send packed in the special way which might be required by the Book-Post rules. The same privilege was partially conceded in England by means of the Pattern-Post, by which, however, the postage-rates were double those of the Book-Post.

There remained to be mentioned a simple alteration made in the rate of postage on the conveyance of closed parcels by the Banghy-Post, a business

that did not properly appertain to the Post Office. The general effect of the alteration would be to increase the rate of postage on all parcels carried very short distances, and to reduce it on small parcels when carried a greater distance than 100 miles. Thus, a small parcel under 20 tolahs weight, instead of, as at present, being charged two annas for less than 100 miles, and six annas for a distance exceeding 100 miles and less than 300 miles, would be charged a uniform rate of four annas up to 300 miles; for a distance between 300 and 600 miles it would be charged eight annas, instead of twelve annas; between 600 and 900 miles twelve annas, instead of one Rupee two annas; and between 900 and 1,200 miles one Rupee, instead of one Rupee eight annas. A similar alteration and reduction would take place on parcels weighing more than 20 tolahs and less than 50 tolahs.

There was no other alteration in the Bill, as amended by the Select Committee, on which it was necessary for him to make any remark.

The Right Hon'ble MR. MASSEY said that he thought that the recommendations of the Select Committee were marked by moderation and good sense. With regard to raising the unit of weight, he considered the Post Office so potent an engine of civilisation, that no Government would be justified in allowing fiscal considerations to stand in the way of such an improvement. At the same time, as the measure would involve in the first instance a considerable loss of revenue, he would impress on his colleagues the advisability of acting with caution. But if they should arrive at the conclusion that the existing unit of weight did check correspondence and was oppressive to the poorer class of correspondents, he could only say that he would not recommend his colleagues to do otherwise than give a liberal reception to that conclusion. He was glad to find that newspapers would come in for a share of the benefits conferred by the new Bill, and he might add that the concession of that boon was not likely to be attended with any loss to the revenue.

The Motion was put and agreed to.

The Hon'ble MR. GREY said that he had some amendments to make. He proposed to omit, in Section 43, the words "and every person who shall aid, abet, or conceal any of the offences mentioned in this Section," and the like words "or shall aid, abet or conceal any of the above-named acts" in Sections 49 and 50, and also the like words "or shall aid, abet or conceal any such acts" in Section 51, and to add a new general Section after Section 51 to the following effect:—

"Whoever abets, within the meaning of the Indian Penal Code, or conceals any offence made punishable by this Act, shall be punished with the punishment provided for such offence."

BENGAL SECRETARIAT LIBRARY

And then he should move that the Sections of the Bill which were now numbered consecutively as 52 to 64 be numbered consecutively as 53 to 65.

The Motions were severally put and agreed to.

The Hon'ble MR. GREY also moved that the Bill as amended in Committee, with the additional amendments now approved, be passed.

The Motion was put and agreed to.

PARTNERSHIP LAW AMENDMENT BILL.

The Hon'ble the PRESIDENT moved that the Report of the Select Committee on the Bill to amend the Law of Partnership in India, be taken into consideration. He said that the Select Committee had recommended that the Bill should be passed without amendment, that is, with the omission of a Section corresponding with the Section of the English Act, which in case of insolvency postponed the commanditarian lender to other creditors. The Select Committee gave as its reason that it considered the Bill a beneficial measure, and saw no reason for limiting its operation. The fact was that all the arguments for the Bill were arguments for omitting the fifth Section of the English Act. If there was anything in them at all, they proved the expediency of the measure without qualification or restriction. He would not repeat the reasoning which he employed when the Bill was before the Council on a former occasion, nor the more cogent reasoning of His Excellency the Commander-in-Chief. But he would submit to the Council that, considered as a question of principle, there were two sides to the question before it, and no more. The rule which the Bill proposed to set aside might be regarded from the point of view of jurisprudence, or from the point of view of political economy; and under both aspects it appeared open to fatal objections. First, as to jurisprudence: the rule which said that participation of profits should of itself constitute the lender a partner was open to the objection that it created a contract without that which was essential to the existence of a contract—namely an agreement. Partnership was a contract. It was a contract under which one intending partner agreed with the other, that that other should be his agent in matters within the sphere of the business. But this rule created a partnership, not only without the agreement of the parties, but in the teeth of their violent disagreement. If you asked the commanditarian lender and the commanditarian borrower whether they desired to make one an agent for the other, they would answer with an emphatic negative. Of course MR MAINE did not deny that there were cases when the law created a contract by implication. If one man paid money to another by mistake, the law implied an agreement or promise on the part of the receiver that he would pay back the money. But the ordinary

juristical explanation of that was, that if the receiver were a person of good conscience, he would under the circumstances actually make the promise. But in order to apply that principle to the present case, it was necessary to assume that when a lender advanced money upon interest varying with and coming out of the profits, his conscience was burdened with the necessity of promising to pay all the borrower's debts, whereas if he advanced money at a certain percentage on the advance, there was no such burden on his conscience, but in equity and good faith he might recover the whole of his loan and protect himself with any kind of indemnity. It was a curious commentary on the theory that there was some natural connection between partnership and participation in the profits, that the connection could only be established by violating the nature of a contract.

Turning, on the other hand, to political economy, surely there was no plainer proposition than that when a trader or a trading firm borrowed money, there was no legitimate fund out of which interest could be paid for the loan, and no fund out of which it could in fact be paid for any length of time, except the profits of the business. MR. MAINE supposed it would be allowed that interest could not be paid out of the losses, and, if it were paid out of capital, it was a process which must soon come to an end. Now then, take two classes of lenders; one, the commanditarian lender, was remunerated in exact proportion to the profits. If the profits were large, his interest was large; if the profits were small, his interest was small; if there were no profits, he got no interest at all. Under no circumstances could he transgress the limits of the legitimate fund. If the firm failed, it must be through ill-luck or mismanagement, it could not be through absorption of the profits. The other class of lender, the ordinary lenders, who were paid at a fixed rate, were entitled to their interest, profit or no profit. There was nothing to prevent their eating into the capital of the firm year after year, and thus contributing to its ultimate insolvency. It would seem, then, on principle, that if any lender required protection and encouragement, it was the commanditarian lender. But the proper course was to leave both classes of lenders to the ordinary laws of trade. MR. MAINE could not conceive a greater economical paradox than was occasionally witnessed, as he was informed, in Calcutta. Some unlucky Natives, trusting to a supposed usage, had advanced money to a firm on the commanditarian system. The firm became insolvent, and when its affairs were investigated before the Court, it turned out that the factor or banyan, who was the intermediary between the firm and the bazaar, had been lending money to the firm at 40 or 50 per cent., and now claimed from the commanditarian lenders all his advances which he had not covered by assignment to himself of the assets.

The truth was, that the only argument against the Bill was the conservative argument that the system had not been tried, and therefore ought not to be tried, or tried only under such restrictions as would mutilate or paralyse it. And no doubt the defenders of the Bill were under a difficulty from the comparative paucity of precedents to point to. Nobody had heretofore come into contact with the commanditarian system in England except by ill-luck. There was, however, one example the other way, of comparatively recent date, which might serve to illustrate the commanditarian system approximately, if not exactly. It would at all events serve to show that it was something very unlike what it was generally supposed to be.

MR. MAINE imagined that if anybody opposed this measure, it would be the great Joint Stock Banks and their Managers. MR. MAINE had not the smallest reason for saying that there was such opposition actually; but the Banks had at present a monopoly of the lending business; and this measure would undoubtedly have the effect of introducing the competition of private lenders, though not for the same class of loans. Now, upon what principle did the Joint Stock Banks do business? He might presume the Council to be aware that they traded, not only on their paid-up capital, but also largely and in some cases very largely, upon the deposits of their customers. These deposits were in effect loans to the Bank, and MR. MAINE would observe at starting, that whatever objections existed to trading partly with the capital of a partnership, and partly with auxiliary capital taken up on loan, applied with full force to the trading of Joint Stock Banks. If there were any thing in the argument against the Bill, it ought to prove that the fewer deposits a Bank obtained, the greater was its stability. But unfortunately for the objection, the reasoning of the commercial world was the other way, and it was generally believed that the greater was the number of depositors, the greater the solidity and prosperity of the Bank. What, however, might perhaps escape notice was that these deposits were, not immediately but ultimately, not exactly but nearly exactly, commanditarian loans. The Joint Stock Banks in England now invariably paid interest to their depositors, at a rate varying with the value of money in the market; higher when money was dear, lower when it was cheap. The actual standard followed in most instances was, he believed, the rate of discount of the Bank of England. It was, however, well known that the periods at which money was dear were the periods at which the Banking business was most profitable; and hence the rate of interest paid to depositors was in the long run a rate varying with the profits of the Bank.

Let the Council, however, observe that the Banks, though they borrowed money on the system just described, always lent money on the old or ordinary

system. It followed, therefore, that all this great and flourishing business of Joint Stock Banking, which had received such immense extension of late years, was organised on the principle that borrowing on the commanditarian system was advantageous to the borrower, while lending on the ordinary system was advantageous to the lender. The Banks borrowed on one principle, and lent on the other, and made their profits between the two. But it would be seen that the whole of the argument against the Bill proceeded on the opposite assumption to that practically made by the Banks. It was assumed by the objectors, that lending on the commanditarian system was so advantageous to the lender that he ought to be placed under a disadvantage to compensate him for his natural advantage. On the other hand, it was assumed that if a man lent on the ordinary principle, he enjoyed no such advantage as ought to prevent his exercising to the full his rights as a creditor.

Other interesting illustrations of the probable effects of the measure might be gathered from the Joint Stock Banking system. Thus, deposits were never taken at interest except under a stipulation that a certain notice should be given before withdrawing them; and indeed, if he were called upon to furnish an analogy to the partnerships trading partly with their own capital, partly with auxiliary capital borrowed from commanditarian lenders, which might be expected to grow up under this measure, he should point to the Joint Stock Banks. The partners would correspond to the shareholders, the commanditarian lenders to the depositors, and the analogy would be nearly complete. It seemed, therefore, to him that, unless the Council believed all Joint Stock Banking to proceed on an unsound basis, they must pass the Bill: and, further, unless they thought that the depositors ought to be postponed to all other creditors of the Banks, they must pass the Bill without the English Section.

The Motion was put and agreed to.

The Hon'ble MR. MUIR moved as an amendment—

That a Section be added to the Bill to the general effect of Section 5 of the Act of the British Parliament passed last year, To amend the Law of Partnership.

"*Section.*—In the event of any such trader becoming insolvent, or taking the benefit of any Act for the relief of insolvent debtors, or entering into an arrangement to pay his creditors less than sixteen annas in the rupee, or dying in insolvent circumstances, the lender of any such loan, as aforesaid, shall not be entitled to recover any portion of his principal, or of the profits or interest payable in respect of such loan, nor shall any such vendor of a good-will, as aforesaid, be entitled to recover any such profits as aforesaid, until the claims of the other creditors of the said trader for valuable consideration in money or money's worth have been satisfied."

MR. MUIR said he had felt unwilling to take any prominent part in the proceedings respecting this Bill, because it related to a question in which he

had no special experience. But the more he had studied the subject in the light of the debates in Parliament, and the reports received from the several Provinces, the more convinced was he that the opinion which he had ventured to express on the introduction of the Bill was well-founded, and that serious risk to commercial credit would ensue throughout the country if the Bill were passed without the English Section, of which he had now moved the addition.

During the past Session, the Imperial Parliament, after a careful and prolonged discussion, had proceeded as far as was found prudent and safe, in freeing the liability of trading capital.

Following the French commanditarian system, Parliament had established a new species of liability. Persons could now contribute capital in the shape of a loan, for which they might stipulate to receive a rateable share of the profits, or interest varying with the profits, and yet not be held responsible as partners. But they were to be in the position of "postponed creditors," that is, they could not recover from the firm, if it proved insolvent, till the ordinary creditors had been paid up in full.

Here, then, was a distinct and definite form of liability. Before this enactment, there had been two forms of liability, unlimited and limited. Now there was established a third or mixed form. The commanditarian sharer, as regarded the public, was liable to the extent of his contribution; as regarded the firm itself, his liability was determined by the contract. No registration was required as in the case of Limited Joint Stock Companies; but, on the other hand, if the commanditarian sharer interfered in the management, he might incur an unlimited liability.

Such, then, was the effect of the English Act. It created a new and distinct species of liability. And the public knew, or might easily know, with what form of Trading Association they were dealing.

Now he (MR. MUIR) would observe, that the present Bill was introduced as a counterpart of the English Law. The Hon'ble Member, in recommending the measure, had stated distinctly that he expected it to produce, in India, "the same effects" as had been realized in France and in England. He would quote his words:—

In the Statement of Objects and Reasons, he said—

"The Bill is expected to produce the same effects as the French system of partnership *en commandite.*"

And in his speech introducing the Bill, he told the Council—

"That the Bill which he had the honour to ask leave to introduce was, with some alterations necessitated by Indian procedure, transcribed from a Statute which passed the English Parliament during the last Session. If it became law, he hoped it would have the same effect as the French system of partnership *en commandite.*"

But in reality, by the omission of the 5th Section, the enactment had been entirely altered, and the effect would be essentially different. Instead of a definite form of interest with a distinct liability, there was, under this truncated Bill, no definite or distinct form of liability at all. The public would not know with what they were dealing, and he (Mr. Muir) apprehended that the action of the Bill in this shape would be seriously to endanger commercial credit.

He would now ask what reasons had been alleged for the omission of the 5th Section. It appeared to him that there were but two. First, that the Section was illogical; and second, that borrowers and lenders should be allowed to make what terms they pleased.

As to the first ground, *viz.*, want of logical consistency, it did not seem to him to deserve much consideration. It was said that in the first Section we declared that to receive a share in the profits did not of itself constitute a man a partner; whereas Section 5 enacted a liability only justifiable on the ground that he was a partner. But it was quite conceivable that, though a man might not be a partner in the technical and full sense of the word, he might yet possess a degree of interest equitably involving a modified liability. At any rate, they had the best of all reasons for the provision in the practical logic of experienced and prudent merchants, who deemed the precaution to be necessary.

The other reason required greater attention. It was said that we ought not to trammel the money market. A trader should be free to borrow capital in any way he liked. If he chose to contract a loan, stipulating to give the lender a full share of the profits, exempting him at the same time from all risk, why should the law step in to interfere with these terms and vary them?

He (Mr. Muir) fully admitted that we had no right to interfere with the terms of such contracts. But he would ask, between whom was the contract made? Simply between the trader and the lender; and it bound them. But it bound no one else. It did not concern third parties, and could not by any possibility bind them. It was a private contract, and not known to the world.

It would be quite different, if, in all transactions with third parties, the trader were previously to tell them of such contracts: if he were to warn them that such a portion of his stock in-trade was not to be held liable for his engagements. If the trader had thus disclaimed liability, then, and not till then, it might be urged that the public was justly affected by the contract. As Joint Stock Companies were not exempt from unlimited liability until they had announced the limitation to the world, so it seemed to him that any limitation of liability stipulated in a private contract could not equitably bind the public until it had been announced to them. And, in the absence of such

warning, he held that the liability of the parties to the contract in respect of their creditors was determinable by an entirely different principle.

What, then, was the principle by which the liability of a commanditarian lender was to be judged? He (MR. MUIR) held that it was by outward appearances. Wherever a person shared in the profits, he was presumed by the public to be responsible in the capital on which those profits were calculated. What was apparent, was identity of interest in the profits; what was concluded, was identity of risk in the stock. Thus, in the English debate the Attorney General had said:—

"But it could not be denied that the ordinary creditor would be inevitably influenced by the capital visibly employed in the trade, by the stock-in-trade, and by the means which the trader was able to present to the world as the foundation of his undertaking. Credit was therefore given to the trader on account of his visible means of stock-in-trade."

In fact, the idea that to share in the profits necessarily implied a corresponding risk in the capital did not (as the Hon'ble introducer of the Bill had said) arise out of a mere legal fiction. It may have been overlaid and disguised by that fiction. But it was a popular idea prevalent all over the world. The connection of profits with risk was so axiomatic, that there was absolutely no word in any language that he knew of to express the opposite, that is to express the relation of a person who shared in the profits but did not share in the risk. That there was no such word in the English language he had on the authority of the Hon'ble mover himself, who stated in his speech—

"That it had become common to call the relation established between the borrower and the lender who was remunerated according to the rate of profit, 'a Commanditarian Partnership.' And there was some convenience in so styling it, because we have not at present any compendious phrase expressing the relation."

There was certainly no phrase of the kind in the Indian languages; the idea seemed to be unknown; and the difficulty of explaining it had no doubt led to a good deal of the vagueness and uncertainty in the replies which had been received from the Native merchants. In short, the dissociation of profit from risk was opposed to the popular notion of right and wrong. He might quote some remarks of the Bengal Chamber of Commerce on this head. Their Secretary wrote:—

"On the other hand, I am instructed to urge that, as a matter of fact, such commanditarian loans are unlikely to be made in this country, except in the expectation that the condition stipulated for, of sharing in the profits, is likely to prove much more remunerative to the lender than a mere interest on his money, and that it is just and right that if the lender has all the benefit and advantage of participating in trade profits, he should also bear its risks to the

extent of his capital embarked in such trade. The lender would then practically be in the position of a shareholder in a Limited Company, liable only to the extent of his capital embarked therein, but not entitled to a return of any share of such capital in the event of a winding-up until the claims of all *bonâ fide* creditors had been met. Immunity to this extent against the unlimited liability of partners, under the existing law applicable to private trading partnerships, is all that, in the opinion of the Committee, is required to induce the investment of capital in such partnership, under the provisions of this Bill. And it is all, in their opinion, which commanditarian lenders can reasonably or equitably require."

He (MR. MUIR) was therefore entitled to conclude that, wherever the public found a lender sharing rateably in the profits, it presumed that he was responsible for loss in respect of his capital; and that unless the public were distinctly warned to the contrary, they might equitably hold the sharer in the profits so responsible.

Mr. Göschen, an authority that would not be disputed on the opposite side, had made a statement in the debate in Parliament, implying that the two things were correlatives :—

"He believed that the proposed system would not lead to fraud in the way suggested, and that the managing partners would not allow those who advanced money to share in the profits without sharing in the losses."

He would now proceed to state some of the practical objections against the omission of the 5th Section. And in so doing he would refer to cases in which the commanditarian lender took his full share of the profits. The Hon'ble President, in the speech he had just made, had confined his remarks to cases of loans at simple rates of interest, varying with the profits; and if the Bill could have been limited to such cases, no ill effect might have ensued. But the measure embraced persons taking a full and unlimited share in the profits, and he (MR. MUIR) was entitled to direct his argument to such cases.

He would speak first of transactions in which there was no subterfuge or bad faith. Now, even here, the omission of Section 5 might injuriously affect third parties. The greater portion of the stock of a concern might belong to a commanditarian lender. In a series of prosperous years, he might have reaped extravagant returns; then follow a series of losing years, in which, by virtue of his exemption, he contributes nothing to maintain the stock. In such a case, notwithstanding what the Hon'ble Mover had said, the capital might virtually be reduced by the profits of the commanditarian lender. A crisis comes: is it fair that he who, by his long drain on the profits and neglect to share in the losses, mainly contributed to the failure, should share in the assets equally with the outside creditor in ordinary trade, who naturally looked upon the commanditarian lender as responsible to the extent of his capital, but now finds that, by a private contract, he had exempted him-

self from liability? The Attorney General in alluding to such a contingency had said:—

"But supposing the person who took no share of the risk furnished all the means, then the whole resources of the undertaking would be derived from the loan so made, and there could be no doubt that there might be some risk of injury, if the creditor who went in for an unlimited share of the profits were able to go in also for a share in the assets of the business to which the credit might have been given. The person who advanced the money had sent the trader into the world with the appearance of solvency, and the stock-in-trade ought, therefore, in the first instance, to be subject to the ordinary *creditors*."

It had been objected that the same result might follow from the lender stipulating for exorbitant rates of interest. The Attorney General had shown that—"if a man lent money at the ordinary rate of interest, he could not be said to be investing it in the business, because he left all the benefit as well as all the risk to the man who was carrying on the trade."

But where the interest was exorbitant, the Attorney General had stated that, if the provisions of the Bill were evaded in that way, he would not be—

"unfavourable to the drawing of a line, if it could be done, beyond which it should be determined that a high rate of interest was a mere cover, and of placing such persons in the same situation as the lender who contracted for a share of the profits."

He (MR. MUIR) did not quite agree in this view. He thought that a distinction might be drawn between the lender of money on interest, whether moderate or exorbitant, on the one hand, and the commanditarian sharer on the other, based on a wider and truer distinction. The two classes were in fact separated by a broad line of discrimination.

When a person contributed funds carrying their share in the profits, what was the impression on the public mind? As already shown, the impression was, that the stock was responsible for the engagements of the house. It added to its stability in outward appearance. Traders dealt with it, and gave credit, partly on the appearance and presumption thus created. And in case of failure, the public justly held the commanditarian lender's capital, with the rest of the stock, responsible for the engagements of the firm.

The case was entirely different with an ordinary loan at interest, whether moderate or exorbitant. Such a loan did not necessarily add to the credit of the house. In some instances, being forced to seek a loan might rather detract from its credit; and the higher the rate of interest the more it might detract. The public did not look to that loan as an asset for the fulfilment of the firm's engagements. And whatever the rate of interest, the public, consequently, had no right to hold such a contribution liable.

In short, the commanditarian lender took his stand on the side of the house, shared in its profits, had access to its accounts, was immediately and deeply concerned in its success. Therefore, though not a partner, he might be held equitably a sharer in its fate as in its profits, to the extent of the capital he had embarked upon it. The lender at interest, on the other hand, was over against the house; he belonged to the class who had claims against it.

He had spoken hitherto of cases in which there was no *malâ fides*. But if the 5th Section were omitted, third parties might suffer also from bad faith.

Under the shadow of the Bill, the real trader might put forward men of straw, and himself keep in the background. It was true that if interference was proved, such a trader might be made liable. But it was notorious that interference and collusion were extremely hard to prove. And if not proved, if the trader successfully stood aside, to outward appearance, he could not be made responsible though he had enjoyed nine-tenths of the profits. He might even have secured his pretended loan by a lien on the assets, and thus, coming in to the exclusion of the ordinary trade creditor, sweep all the assets away. It was to guard against abuses of this nature that Section 5 was especially required. He would again quote from the Attorney General;—

"It had been suggested that by possibility the real trader might not hold out his name to the world, that he might furnish all the means and stipulate for the profits, and in that way avoid running any risk. This clause was intended to supply a practical security against any evasion of the law of that description. It might be objected that the lender could withdraw the amount of his advances before the other creditors got possession of the bankrupt's property, but in such a case an investigation could take place to ascertain whether there had been a fraudulent preference, and if so, it could be dealt with by the existing law. What was proposed by the Hon'ble Member for Brighton (Mr. Moore) would enable the person who might be the real trader to come in at the last moment and sweep away the ostensible means of the business *pari passu* with the other creditors, or perhaps in preference to them.

"The clause would in reality act as a check on the formation of a fraudulent undertaking between the trader and the partner who advanced him money on the condition of participating in the profits of the business. The partner enjoyed the benefit of the business if it was prosperous, and if it was not prosperous he ought to share to the limited extent to which he had embarked capital in it in the loss which it entailed. He was of opinion, then, that they would be proceeding safely and cautiously, and taking good securities against abuse, if they were to adopt this clause."

Such being the case, he (MR. MUIR) was justified in concluding that if the Bill were passed without the English Section, the tendency would be to create distrust and want of confidence in the mercantile community. No one would know with what they were dealing. It might outwardly be a substan-

tial house, and credit given accordingly. In reality it might be a house built as it were of cards, that would fall at the first touch, the whole stock having by special agreement been exempted from liability. It was very much on grounds of this nature that the Bengal Chamber had urged the retention of Section 5. The Secretary had thus reported:—

"I am instructed further to point out that, though the exceptional privilege which will be conferred on commanditarian lenders by this Bill, should it pass without a Section corresponding to the 5th Section of the English Act, may encourage advances by way of loans to trading firms, yet that their stability may not thereby in reality be practically increased. A firm obtains credit on the reputation which it enjoys of having a certain capital invested in it proportioned to its extent of business, and available to satisfy the demands of creditors in the event of losses; but if a great part, or, as may prove in some cases, the whole, of such capital, is not capital in this sense, but merely loans which the commanditarian lender can at any time withdraw, or for which, in the event of insolvency, he can rank on the debtor's estate in competition with other creditors, no confidence will be placed in such firms. Their ordinary trade creditors will press them whenever general confidence is in any degree shaken, and what might under other circumstances have proved a mere temporary pressure may, through a withdrawal of support at a critical moment, result in disastrous failure. On these grounds, and also on the general ground of the undesirableness that any difference should exist between the law in India and the law in England on this subject, my Committee respectfully recommend that a Section similar to Section 5 of the English Act be introduced into the Bill.

He might also quote the opinion of the Madras Chamber of Commerce. It had resolved:—

"That the Chamber, while cordially approving the principle of the Bill introduced into the Legislative Council of India, for the amendment of the Law of Partnership in India, is of opinion that the clause in the English Act relating to the position of commanditarian partners in cases of insolvency, should be retained in the Indian Act, and that its omission would be calculated to remove a salutary check on reckless lending and borrowing, and to lessen the stability of commercial firms."

By all means let such reckless trading and firms resting on no certain basis of capital exist if they pleased; but let it be on a system by which society at large might be aware of the high pressure and dangerous machinery which they brought into play. And if there was no means of warning the public, then he (MR. MUIR) thought that the Council could not safely dispense with the English Section.

He considered it highly creditable to the gentlemen of both Chambers that, though they might naturally have been swayed by the additional convenience to themselves which, on retirement, they might enjoy if the Section were omitted, they had looked beyond these attractions, and had wisely

considered the injurious results which might thereby accrue to commercial credit at large. The Trades' Association, on the contrary, had apparently been dazzled by the advantages to retiring partners, and in their report had made no allusion whatever to the possible risks that might be apprehended.

Mr. Muir proceeded to examine the Native usage in respect of commanditarian partnership. He reviewed the opinions which had been elicited by the enquiries made by Government, and contended that, though there were occasional vagueness and inconsistency in the replies, the general sentiment prevailed almost universally, that to share in the profits of a business necessarily involved a sharing also of risk in respect of the capital embarked. Apart from theoretical opinions on the Bill, the evidence, he said, went to shew that this was the usage and custom of the country. Mr. Muir also read extracts of a letter from Mr. Thornhill of Allahabad to the same purport.

The Bill without Section 5 would thus, Mr. Muir said, place the law in opposition to the Native usage. The Hon'ble the President would tell him that, if such a usage were proved, then the Bill (which merely provided that the receipt of profits did not *of itself* constitute partnership) would not relieve the commanditarian lender from liability. But he (Mr. Muir) needed not to point out that it was extremely difficult to give legal evidence of a usage. The reports now before the Council amply proved this. There might be no moral doubt of the usage, and yet it might be almost impossible to prove it in the courts. And if any such cases as those he had before supposed should hereafter occur,—if in opposition to Native usage and through the force of this law, a person who had shared in the profits were, on insolvency, to share also in the assets—he need not say what a shock would be given to credit throughout the country. Mercantile credit was a tender and sensitive plant, and we ought not to countenance any system by which it might be rudely assailed. He therefore earnestly begged the Council to pause before they gave their sanction to a measure which might be productive of such grave results.

In conclusion, Mr. Muir said that he had gone into these objections against the omission of Section 5, though it really was not necessary for him to have done so. Because the burden of proof rested upon those who wished to depart from the provisions of the English Act.

He took his stand upon two principles—

First.—That in our Indian legislation we were bound to follow the English commercial law, unless we could prove a speciality in the circumstances of this country requiring deviation from it.

Second.—That we ought to provide the same safeguards against an abuse of the law, which Parliament had established in England, unless we could shew that the corresponding risks had no existence here.

On the first of these points he could not do better than quote from the remarks of a gentleman whose late departure from India and from this Council they all so much regretted. They coincided exactly with his own sentiments :—

"There was another argument against the omission of a Section corresponding with the 5th Section of the English Statute, with which the Hon'ble mover of the Bill had himself supplied them, when asking leave to introduce the Bill to adapt to this country the English Companies' Act of 1862. The Hon'ble gentleman had then argued that, when a principle had been adopted by the more active and numerous commercial society of England, it might fairly be tried in the commercial society of this country, provided that no argument could be used against it, which might not have been urged in England and had not prevailed. Now, objections were taken to this Section when the measure was discussed in the House of Commons, but though there was a large majority of the Committee in favour of the general principle of the Bill, the mover of an amendment that this Section should be omitted did not venture to press it to a division. He (Mr. Bullen) thought the question of omitting this Section required great consideration, and he reserved to himself the right of moving at a future stage that it be inserted in the Bill."

On the second head, no argument whatever had been adduced to shew that the same risk and danger of evasion and subterfuge did not exist here as it was admitted to do in England. On the contrary, voices of warning had been raised against the omission of the fifth Section from all parts of the country, and from the Native community, as he had shewn, equally with the European Was commercial credit so much more hardy and vigorous in India, that we could here dispense with securities deemed absolutely necessary in England? And not in England only, but in France, in the United States, and he believed in every country in the world : for, so far as he could ascertain, there was no country in which the proposed relaxation of liability prevailed.

That being the case, it would require some weighty and convincing argument indeed, such as he had yet to hear, for introducing a change so vital and so serious into the law of trading liability ;—a law which had been anxiously discussed at every point, in both Houses of Parliament, by men of the highest mercantile experience, and which had met with the emphatic and unqualified approval of so distinguished a Law Reformer as Lord Brougham.

Those who would reject the Section might think that in this small Council there was greater wisdom than in the collective Houses of Parliament. For his part, he (Mr. Muir) preferred to follow the conclusions of the Imperial Legislature.

The Hon'ble MR. COWIE said that, as he was a Member of the Committee on this Bill and concurred in its report, it might have been unnecessary for him to say any thing on the present occasion, but he held it to be more courteous to those of his brother merchants who differed from him in opinion, that he should briefly state in this Council his reasons for supporting the Bill as it stood without the introduction of Section 5 of the English Act.

He conceived that Section to be entirely opposed to the spirit of the Bill before the Council. That spirit was to conduce to the influx and extension of capital among private firms on principles of limited liability; but he asked, what capitalist would be tempted to become a commanditarian lender when he was told by this Section 5 that, if he placed money in a firm and it became insolvent, he would in ninety-nine cases out of a hundred lose the whole of it. Practically, this would be the effect of the Section, for it was unfortunately matter of history in all countries, that in a commercial insolvency, whether it arose from unavoidable misfortune, or wreckless trading, or an ignorance of some of the first principles of business, the result was a dividend or dividends, but never, except in very rare and honourable exceptions, twenty shillings in the pound. The commanditarian lender in such circumstances would never receive a penny from the insolvent estate.

When this Bill was first introduced, he (MR. COWIE) mentioned an argument as likely to be used against it, viz., that the lender would have the advantage over other creditors of inspecting the affairs of the borrower and of drawing out his money when he saw that they were in a precarious position. That argument was used, but he thought there was more to be said against it than in its favour. The public had two safeguards against this: one that the Bill only declared that the lending money for a share in profits should not *of itself* constitute a partnership. But there were many modes in which a partnership might be proved, and he could readily fancy the ingenuity of the law fixing a man as a partner for exercising that precise degree of supervision of a business which he had flattered himself would enable him as a commanditarian lender to withdraw his funds in critical times. The other safeguard was, that no firm in its senses would take such funds without stringent arrangements as to the circumstances and periods of their withdrawal.

The Hon'ble Member (MR. MUIR) had expressed his regret that he had had no personal experience in matters of partnership. He (MR. COWIE) gave the personal fact for what it was worth when he mentioned that he had been for twenty-four years a member of a firm in this city, wherein he had been connected with seven or eight partners, senior and junior, and with that experience he cordially voted for this Bill, excluding Section 5 of the English Act.

The Hon'ble Member in one part of his address appeared to him (MR. COWIE) to assume that the more a firm had the command of, in the shape of capital, commanditarian or otherwise, the more recklessly speculative it would become. His experience of mercantile life had been different. He had always found that it was the men of small means who thronged the avenues of Basinghall Street and the High Court, and not men who had started with real capital. With reference to the opinion received from the Madras Chamber of Commerce, he was able to state that the retention of Section 5 was debated in a full meeting of twenty-one members, of whom eleven were for, and ten against it.

The Hon'ble RÁJÁ SÁHIB DYÁL, speaking in Hindústání, said that if the lender who advanced money in consideration of receiving a share of the profits were declared irresponsible for the losses of the firm to which he had made such advance, mercantile credit would undoubtedly be seriously affected, and as credit was the basis of all mercantile transactions, commerce itself would be checked and its interests would suffer. The principle of the lender's not incurring the responsibilities of a partner by lending money on the above terms might be a good one when applied to Companies whose stock was divided into a number of shares of fixed amount; it was not, however, applicable to Indian mercantile firms in which there were only two partners. According to the custom prevalent in India, there were three privileges attached to partnership:—

1.—To receive a share in the profits.

2.—To inspect the accounts.

3.—To direct the affairs of the firm.

The two first were highly prized and were great strengtheners of partnerships, but the last being looked upon with disfavour tended to weaken partnership, for if one of the partners was an able man, the management was often made entirely over to him; such was the case when an infant or Purda lady succeeded to a partnership, and retained his or her interest in the house, such infant or lady, in case of reverses, bearing his or her full share of the firm's responsibility. The present Bill enabled persons to enjoy the two first of these privileges, viz., the profits and inspection of the accounts, which, as he had shown, were alone prized, and absolved them from responsibility because they did not enjoy the last, which, as he had already said, was considered of little value.

The transactions of an Indian mercantile firm generally amounted to more than ten times its capital, bills being drawn on consignees against the goods despatched to them. These bills were negotiable, and indeed the commerce of

the country was carried on almost entirely through such bills of exchange. The measure now before the Council would, however, by engendering suspicion in the minds of traders, destroy the credit which rendered the said bills of exchange negotiable, and would thereby paralyse the commerce of the country.

So, in partnerships for one single transaction, there would be danger of collusion; the capitalist, in case of loss, claiming to be a commanditarian partner, and his partner for a consideration affirming his statement. For instance, grain was bought at a time of threatened drought at a high rate per maund; a plenteous rain suddenly fell and the price of the grain so bought fell to a figure that would entail heavy loss on the one of the partners by whom the money for the transaction was to be advanced; to avoid this, he claimed to be a commanditarian partner, his moneyless partner affirming his statement on the understanding that he should receive a handsome present when released from the imprisonment which his insolvency would probably involve. This state of things would evidently be very prejudicial to this kind of partnership, which was the one generally obtaining in the Mofussil.

He would repeat that, unless the Section proposed in the amendment now before the Council were added, this Bill would sow the seeds of distrust and disunion among the merchants and traders; it would strike at the root of credit, and would give rise to endless lawsuits and injury to just rights throughout the country.

His Excellency the COMMANDER-IN-CHIEF had not intended to trouble the Council with any further expression of his sentiments on the Bill now before it. But in the course of debate certain points had occurred which induced him to offer a few remarks. In the first place His Excellency would say that his Hon'ble friend, Mr. Muir, had manipulated the evidence with considerable ingenuity. His Excellency did not read the evidence in the same manner as his Hon'ble friend. It was very true that the latter had been able to present the opinions of eight or ten persons which coincided with his own. But quite as many could be brought forward in the Bengal and Madras Presidencies in favour of the opposite view. How did the case stand if we travelled to the Bombay Presidency, to which the Hon'ble MR. MUIR had not made the faintest allusion? There we found, with one single exception, a considerable number of firms which, as he (SIR W. MANSFIELD) knew from personal acquaintance, stood at the very head of the commerce of the country, and which were prepared to accept the Bill in its integrity. That was very important when we were asked to consider Native public opinion and the manner in which this particular measure was viewed by the Native mind.

With regard to the observations of the Hon'ble RÁJÁ SÁHIB DYÁL, they had already been met by his hon'ble friend MR. COWIE. It was impossible to say that credit was shaken by any method which invited capital for the purposes of commerce, and was based on a sound principle. It was said that the principle on which this measure was founded was unsound. His Excellency joined issue on that. Put the case of a commanditarian lender agreeing to lend on condition of receiving a portion or even the whole of the profits. Nothing could be more certain than that, nothing could be paid out of profits if none existed. It was assumed by his Hon'ble friend, and by those speakers in the House of Commons on whom he relied so much, that there was a constant flow of profits until the firm failed. In his (the COMMANDER-IN-CHIEF's) opinion the commanditarian lender underwent peculiar risk. In one year he got his profits, the next year, which might be a bad one, he got none. An Hon'ble friend of his, a member of the Committee who was not present (Mr. Ross), had expressed his doubts whether the profits of trade were at all times equal to the interest exacted by lenders of fixed loans. That was a view which had not occurred to His Excellency as one unconnected with trade. But when he reflected on the exorbitant price of loans and discounts in times of great pressure, of panic or of commercial excitement, it was evident that there was reason for the remark, and therefore that they were liable to exceed the profits ultimately coming to the commanditarian lender. Assuming that the ordinary precaution had been taken, of making a special agreement, which the Hon'ble MR. COWIE had described as certain to occur in every case of commanditarian loan, and by which the lender would be bound for a year or a term of years, it was evident that such a lender shared the hopes and fate of the house, instead of standing opposite to it and being an enemy, as asserted by his Hon'ble friend opposite. Then, the lender of loans at fixed interest demanded his right when there were no profits; the commanditarian lender, on the contrary, when there were no profits, was unable to make any demand. Which of the two, then, was the enemy of credit? the lender who supported the capital of the firm not making profits, by abstaining from demand on account of the money lent, or the lender who attacked the capital of the concern—that was to say, who demanded that interest should be paid out of capital when no profits existed? To a question put in that manner there could be but one reply.

His Hon'ble friend proceeded to invoke the mantle of the House of Commons and to demand that our judgment should be entirely guided by a decision recorded by that august assembly. He had as much respect for the House of Commons and its decisions as was well possible. But it required little political experience to know that, when a party was described as consisting of experienced

men, they might often be more fitly designated as interested. He had read yesterday the debate on which his Hon'ble friend laid so much stress; and he must confess that the perusal left no serious effect on his mind. He could only trace the desire of compromise on the part of the introducer of the measure, and of unqualified hostility on the part of those who opposed it. We should therefore not be guided by what he considered an erroneous decision. If any authority were wanted, he would rather take such an authority as John Stuart Mill, supported as he was by such lawyers as Lord Westbury and Lord Cranworth, the late and the present Chancellors, instead of men who might fairly be supposed to have an interest in its opposition.

The Right Hon'ble MR. MASSEY said that, as he was not present when this important subject was last discussed, he was unwilling on the present occasion that the debate should close without his making one or two brief remarks. His Hon'ble friend who proposed this amendment had invited the Council implicitly to follow the course which had been prescribed by the Imperial Parliament with regard to the question. There was no man who had a greater veneration than himself for the British Parliament, and especially for that branch of it of which he had been an humble member for many years. But his experience had shown him that the argument and the vote were not always in unison. This was not the first time he had heard the arguments urged by his Hon'ble friend MR. MUIR. His Hon'ble and gallant friend, the Commander-in-Chief, had really touched the sore point of the question. The Section mentioned in the amendment had originally been introduced, ostensibly on behalf of the creditor, but really because the whole system of commanditarian partnership was opposed by the old established firms, who disliked a system founded on principles novel and, as it appeared to them, disreputable and insecure. He did not wish at all to censure the motives which dictated that opposition. He thought it was a sort of opposition which a proposal of that kind was most likely to encounter. Now the clause was prepared ostensibly in the interest of the creditor. The creditor was formerly a great favourite of the English Law, and a great amount of iniquity and cruelty had been perpetrated to give effect to that partiality. Happily more enlightened counsels now prevailed. But still one might observe, in English legislation, too great a disposition to take care of a person who was very well able to take care of himself. What was the origin of this question? It had originated about a century ago in a decision of the Courts in regard to this particular practice. This system had been introduced into the law of Partnership by the decisions of the Courts of Law, when the principles which ought to regulate commercial affairs were very imperfectly understood by lawyers as well as merchants themselves. And what was the object of this Bill? It was simply to repeal that judge-made law, and to

place the creditor of a partnership precisely on the footing of the creditor of an individual. For his part, MR. MASSEY had heard nothing which would induce him to believe that there was any distinction between the position of a firm obtaining a loan, and that of an individual borrowing money. Nor could he see that, if a person came forward and was disposed to lend his money to a firm on terms that the borrower was willing to accept, he should be precluded from the privileges attached by English law to an ordinary lender. The Council had been told that there might be such things as fraudulent preferences pervading these transactions. Of course, fraudulent preference was a proceeding familiar to persons connected with commercial concerns. It had constantly been the object of commercial legislation to protect the general body of creditors from the preference which a creditor on the brink of insolvency might wish to show. But there was nothing in the amendment proposed by his Hon'ble friend which would meet a difficulty of that sort. His Hon'ble and gallant friend opposite had so completely answered the argument urged by his Hon'ble friend (MR. MUIR), and the President's lucid statement had so entirely anticipated the objections of principle which might be urged in behalf of this particular amendment, that it would be a work of supererogation on his (MR. MASSEY'S) part to pursue the subject further. The analogy between partnerships of this description and Joint Stock Banking Companies was complete and unanswerable, and if he wished to refer in particular to any class of commercial enterprises which had taken a deep root, he would refer to the Joint Stock Banks which had established themselves within the last few years all over Great Britain. That being so, he could not but come to the conclusion that, although this clause had been introduced into the Act passed in England, if the framers of the Bill had not been subject to influences which all connected with the course of English politics would understand, they would have preferred the measure without a clause which was at once inconsistent and injurious.

The Hon'ble COLONEL DURAND entirely concurred with the principle of the Bill, and was not prepared to go with his Hon'ble friend, Mr. Muir, in his amendment, the arguments which had been adduced to the Council in opposition to Mr. Muir's first amendment being very forcible, while, at the same time, they had heard strong reasons, both from his Right Hon'ble friend Mr. Massey and the Commander-in-Chief, why they should not be entirely guided in questions of this kind by a decision of the House of Commons. It appeared to him, however, that one of the points in which the Council should regard this measure was its effect on the mass of the Native community. He confessed, both from the papers put before the Council, and also from his own knowledge

of the country and what he had heard from well informed mercantile men, that so far as the practice and habits of the country were concerned, this Bill was an innovation, and that the mercantile Native community would have, if this Bill was passed, gradually to conform to the novelty. He did not say they would not be able to do so. They would in time. At the same time he must repeat that, respecting the entire mass of the population, this was an innovation. He knew, as the Commander-in-Chief had point out, that the Parsees in Bombay were with but one exception entirely in favour of the Bill. It must be considered, however, that the Parsees were far more like Europeans, far more on the footing of one great mercantile community, than any other class of the Native population; and it was not fair to take them as representatives of the great mass of the Natives of this country. He thought it would be well if some sort of security could be provided. In France, from which country we derived the commanditarian principle, they had been very careful to register commanditarian loans. Very possibly, as the President had pointed out, the French law carried interference in minutiæ to a degree which acted as a check upon the free engagement of capital. Still he (COL. DURAND) thought that some simple system of registration might have been introduced into the Bill, which, without interfering unnecessarily with the affairs of the borrowing firm, would have been felt by the bulk of its creditors as some security. He would not go against the majority of the Committee or the majority of the Council. He agreed with the principle of the Bill as introduced, but he did wish that it had contained some provision for registering commanditarian loans.

His Excellency the COMMANDER-IN-CHIEF said that he would venture to correct what had fallen from the Hon'ble Colonel Durand in respect of the Bombay opinions having come solely from Parsees. The fact was that they came from merchants of every religion, the single exception being from the house of David Sassoon & Co., a Jewish firm.

The Hon'ble the PRESIDENT said that he would have a good deal to say in reply to the observations of his Hon'ble friend Colonel Durand; but he thought that the subject had better be deferred until the Hon'ble Mr. Muir had moved his second amendment, which would raise the question of registration directly. As regarded the first amendment, he would add nothing to the arguments of His Excellency the Commander-in-Chief, and his Right Hon'ble friend Mr. Massey. But he would assign one reason why a provision which might be good in England might be bad in India, in the fact that the amendment proposed by his Hon'ble friend Mr. Muir was completely unworkable. Mr. Muir had fallen into the mistake of supposing that there was any conclusive test of insolvency

other than the result of an examination into the supposed insolvent's affairs before an Insolvent Court. Now there was a system of insolvency in the Presidency Towns, and he believed that there was some rude system of the sort in the Punjab. But India was a great deal larger than the Presidency Towns and the Punjab; and throughout the rest of India, it was impossible to apply the suggested provision. Let a case be supposed to occur in those parts of India where there was no insolvent law. A capitalist has lent two lakhs of rupees on commanditarian loan, and wants them back again. Is the borrower to reply that he is in debt to somebody else? May he decline to refund the money on the ground that he has not paid his khánsáma's bill? Or is a third person to be allowed to intervene and allege that he has a claim against the borrower? Why, the claim may be fraudulent or collusive, or it may be made in good faith but it may be unfounded, or it may be legitimate, and yet if all the assets of the borrower were collected, there might be enough both for the claimant and the commanditarian lender? The state of things was very different in the Presidency Towns. There, when an insolvency occurred, the debtors of the alleged insolvent were called on to pay their debts, and the creditors to prove their claims, and after a balance had been struck between the two, it would be seen whether, in the words of the English Section, the estate paid twenty shillings in the pound. But throughout the rest of India no such conclusion could be reached, and it was impossible to have one system for the Presidency Towns, and another for the Mofussil. You could not have commanditarian lenders enjoying the full rights of creditors on one side of the Hooghly, and not enjoying them on the other; paid in full at Port Canning, but not in Calcutta; admitted to share in Kurrachee, but postponed in Bombay. As regarded the bulk of India, the provision of the Section was impracticable; in the Presidency Towns it was impolitic; but divided between the Presidency Towns and the Mofussil, he did not think he was using too strong a word in calling it absurd.

The Hon'ble MR. MUIR said, with reference to what had just fallen from the Hon'ble the President, that he did not think it could be regarded as any valid objection against his amendment. If the principle of the Section were admitted, it would be easy for legal ingenuity to reconcile its application to Indian procedure.

Moreover, it appeared to him that the Section as it stood would not be inoperative. The result would be something in this way. If decrees were obtained against a firm, one by a commanditarian partner, the other by an ordinary trade creditor, then the trade creditor would be preferred in the execution of such decrees; and until his claim had been satisfied, that of the other would be postponed.

He (MR. MUIR) had not heard anything in the statements of the other speakers which required further reply. And he had only to beg that the amendment might now be put.

The Motion having been put, the Council divided—

AYES.	NOES.
Hon'ble Rájá Sáhib Dyál.	The President.
„ Mr. Muir.	The Hon'ble the Lieutenant-Governor.
	His Excellency the Commander-in-Chief.
	Hon'ble Mr. Grey.
	„ „ Taylor.
	Right Hon'ble Mr. Massey.
	Hon'ble Colonel Durand.
	„ Mahárájá of Vizianagram.
	„ Mr. Cowie.

So the Motion was negatived.

The Hon'ble MR. MUIR now moved the second amendment on the notice paper, viz., that in Section 1, after the words "in writing," the words "and registered" be inserted.

In the House of Commons, Mr. Moore, one of the two members who alone spoke against Section 5, had nevertheless urged that if the Section were omitted, the contracts under which commanditarian partnership was established should be registered. He said that—

"He would suggest that a proviso should be attached to the first clause, to the effect that every contract for a loan of money to a trade, upon a certain rate of interest out of the profits of the trade, should be registered. In the absence of such a proviso, they would be opening the door to a large amount of fraud. It had been stated that registration would be useless, because the person who lent the money would not be known, but he only desired that the fact should be registered."

If a measure of that kind had been thought necessary in England by those who opposed Section 5, how much more necessary would it be in India, where it was notorious that the disposition and facility for the fabrication of deeds prevailed to so much greater an extent than in Europe. It was not any special kind of registration, as that provided for Joint Stock Companies, which he pressed for, but ordinary registration. If this were not insisted on, we should be liable, on the failure of a house, to have commanditarian contracts forged and presented in Court with the view of collusively exempting the commanditarian partner from liability by an *ex post facto* agreement. Without registration, the honest trader would thus be liable to be cheated.

The Hon'ble the PRESIDENT could hardly think that his Hon'ble friend could intend his amendment to be carried as it stood. It would be necessary to say with what Registrar the contract should be registered. MR. MAINE supposed that the Registrar of Joint Stock Companies was intended. That proposal proceeded on a supposed analogy between two forms of limited liability, which, however, had little or nothing in common. The shareholder in a Joint Stock Company was a trader. He elected his Directors, controlled their mode of doing business at meetings, and had a status in a Civil Court which entitled him to an injunction against them if they acted contrary to the articles of agreement. But the commanditarian lender was not a trader. The moment he interfered in the trade, he became, by operation of the words "of itself" in the Section, a partner with unlimited liability. Moreover, his Hon'ble friend had mistaken the object of registering the shareholders in a Joint Stock Company. That object was simply to let the creditors of a Company know who their debtors were. The capital was divided into a number of small shares which were constantly changing hands; and unless the holders were registered, it would be impossible to identify them when the Company was wound up. There was no such object in registration as his Hon'ble friend seemed to have in mind: for Mr. Muir intended, he supposed, to label by registration the firms which took commanditarian loans as in some way inferior to others. Registration, moreover, would lead to some extraordinary results. If these loans were registered, there must be an entry in the register when they were paid off. Now, suppose a creditor inspecting the register, and finding a commanditarian loan of a lakh of rupees first entered as contracted, and then as paid off, what inference was he to draw? Mr. Muir apparently wished him to rejoice that his debtors were free from the incubus of commanditarian loan. But MR. MAINE rather thought his inference would be that they had £10,000 less to trade on. The fact was his Hon'ble friend must make up his mind whether commanditarian loans were or were not good things for a firm. Very remarkable frauds might, moreover, be perpetrated by means of registration. A firm might advertise advances of one lakh of rupees from one person another lakh from another, a third from a third; and all these advances might be imaginary or collusive. MR. MAINE had in fact been informed that such a mode of fraudulently obtaining credit was sometimes actually resorted to in America.

The Hon'ble MR. MUIR begged to state, before the discussion on this amendment went further, that the Hon'ble President had entirely misunderstood the object of the amendment. He (MR. MUIR) had distinctly stated that it was not special registration, as in the case of a Joint Stock Company, but "ordinary registration" that was required; registration as in the case of ordinary assurances or contracts to prevent the fabrication of such documents.

The Hon'ble the PRESIDENT observed that, in that case his Hon'ble friend employed the word "registration" in a sense different from the Hon'ble Colonel Durand, and from the English Members of Parliament whom he had quoted. This it was which had misled him. Now, however, his objection was that the registration of partnership deeds was not compulsory under the registration law, but was optional, and there was no more reason to anticipate fraud in contracts of this kind than in any other kind of contract of loan.

The Hon'ble MR. MUIR resumed; it was not, as the President had said, his object by registration to label or stamp the commanditarian partnership, indicating it thus to the world, but simply to prevent the possibility of commanditarian partnerships being fraudulently set up by *ex post facto* fabricated deeds. It was to secure the contract being embodied in a *bonâ fide* genuine deed that he pressed for compulsory registration. That was his sole object.

The Hon'ble the PRESIDENT said that the amendment would then be open to the second class of objections.

The Motion having been put, the Council divided—

AYES.	NOES.
Hon'ble Colonel Durand.	The President.
„ Mahárájá of Vizianagram.	The Hon'ble the Lieutenant-Governor.
„ Rájá Sáhib Dyál.	His Excellency the Commander-in-Chief.
„ Mr. Muir.	Hon'ble Mr. Grey.
	„ Mr. Taylor.
	Right Hon'ble Mr. Massey.
	Hon'ble Mr. Cowie.

So the Motion was negatived.

The Hon'ble MR. MUIR then moved his third amendment:—

"That a Section be added to the Bill to the effect that,—"If by the usage of any class of merchants or traders, the taking of a share of the profits, or of a rate of interest varying with the profits, is held to imply partnership or liability on the part of the lender of any such loan, nothing in this Act shall affect such partnership or liability."

He said he understood from certain remarks which fell from the Hon'ble mover of the Bill in Committee, that this amendment would be a simple enunciation of the law as it now stood. If in a suit it were proved that a person sharing in the profits was by the usage and custom of the class to which he belonged responsible, this Bill would not relieve him from liability, because it simply enacted that the receipt of profits did not *of itself* constitute partnership. He had before stated, in moving the first amendment, that he feared

that this concession to custom and usage would not prove any very sensible advantage, because it was a notoriously difficult thing legally to prove a custom. The reports now before the Council gave ample evidence of this. There might be a full conviction in the mind that the usage existed, and still it might be extremely difficult to bring it to the test of legal proof. Still the Section of which he moved the insertion, might be of some practical advantage. It would at all events keep the declaration of the law in conformity with the usage of the country. It had been objected in some of the reports otherwise in favour of the Bill, that it was so bald and naked in its form, that its provisions and eventual effects would not be intelligible to the Native community. Although, therefore, the amendment might merely state a principle latent in the enactment, he thought it would be of advantage as bringing that principle to view, and showing that the usage, wherever it existed, might be pleaded against exemption from liability, and that there was no intention to interfere with the custom of the country.

The Hon'ble the PRESIDENT said that the amendment was apparently moved under misapprehension of the effect of the Bill. The Bill would simply alter the general *primâ facie* rule, and any usage of trade or understanding between traders could be set up against that rule, if it could be ascertained by the proper tests and proved by the proper evidence. He was afraid that the result of inserting the words would be to tempt the lower Courts to attach importance to usages imperfectly ascertained and proved. It was notorious that suitors constantly attempted to establish almost any thing as a usage of trade; and one of the duties of Courts was to apply strict tests to such alleged customs.

The Motion having been put, the Council divided—

AYES.	NOES.
Hon'ble Rájá Sáhib Dyál.	The President.
,, Mr. Muir.	The Hon'ble the Lieutenant-Governor.
	His Excellency the Commander-in-Chief.
	The Hon'ble Mr. Grey.
	The ,, ,, Taylor.
	Right Hon'ble Mr. Massey.
	Hon'ble Colonel Durand.
	,, Mahárájá of Vizianagram.
	,, Mr. Cowie.

So the Motion was negatived.

The Hon'ble the PRESIDENT moved that the words "agree in writing to" be inserted after the word "same" and before the word "allow" in line 9 of the Explanation to Section 1.

The Motion was put and agreed to.

The Hon'ble the PRESIDENT then moved that the Bill as amended be passed.

The Motion was put and agreed to.

JUDGES' COMMISSIONS BILL.

The Hon'ble the PRESIDENT also moved that the Report of the Select Committee on the Bill to relieve the Governor-General of India in Council from the duty of signing the Commissions mentioned in Sections 22 and 44 of the High Courts' Criminal Procedure Amendment Act, 1865, be taken into consideration. He said that the Committee had no amendments to propose.

The Motion was put and agreed to.

The Hon'ble the PRESIDENT then moved that the Bill be passed.

The Motion was put and agreed to.

PUBLIC MUSEUM (CALCUTTA) BILL.

The Hon'ble the PRESIDENT also moved that the Report of the Select Committee on the Bill to provide for the establishment of a Public Museum at Calcutta, be taken into consideration. He said that the Select Committee had added the Superintendent of the Geological Survey of India to the list of *ex-officio* Trustees, and had precluded the Trustees from interfering with such portion of the proposed building as might be set apart for the offices and records of that Survey; that the Committee had provided that the Officers and servants of the Trustees should be public servants within the meaning of the Penal Code; that it had given the whole body of Trustees, and not merely the Chief Justice, the Vice-Chancellor of the University, and the President of the Asiatic Society, the power to appoint Curators of the collections of the Asiatic Society during the interval that must elapse before such collections would formally become the property of the Trustees. The Committee had also struck out as merely declaratory of an indisputable right, the Section giving the Asiatic Society power to dispose of their present house. It had also struck out the Clause binding the Trustees to insure against fire the collections of the Asiatic Society. It would, the Committee thought, be difficult, if not impossible, to effect any such insurance for an adequate sum; and if such

insurance were effected, the monies received in respect of it could not be expended in replacing collections of which a great part consisted of unique objects.

The Motion was put and agreed to.

The Hon'ble the PRESIDENT then moved that the words "But nothing herein contained shall be taken to authorise the exchange or sale of any of the articles mentioned in the thirteenth Section of this Act" be omitted in Section 9. And he also moved that the following words be added to Section 13 :— "All objects taken in exchange under Section 9 of this Act for, and all monies payable on sale under the same Section of, any of such articles, shall be held on trusts and subject to powers and declarations corresponding as nearly as may be with the trusts, powers and declarations by this Act limited and declared concerning the same articles." The agreement between the Government and the Asiatic Society, in which the Bill originated, stipulated that in case the Museum Trust should determine the collections contributed by the Society should again become their property. To carry out this stipulation in its integrity, all articles belonging to the Society's collections had been exempted from the operation of the power of sale and exchange given to the Trustees. But it had been pointed out that it might be highly expedient to get rid of imperfect or decaying specimens and, accordingly, with the assent of the Society, the present amendment was proposed.

The Motions were severally put and agreed to.

The Hon'ble the PRESIDENT then moved that the Bill as amended be passed.

The Motion was put and agreed to.

INDIAN MARRIAGE ACT EXTENSION (HYDERABAD) BILL.

The Hon'ble the PRESIDENT also introduced the Bill to extend the Indian Marriage Act, 1865, to the Hyderabad Assigned Districts, and moved that it be referred to a Select Committee with instructions to report in a week.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to extend the Indian Marriage Act, 1865, to the Hyderabad Assigned Districts—the Hon'ble Messrs. Grey and Muir, and the Mover.

The Council adjourned till the 24th March.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Dept. (*Legislative*).

CALCUTTA,
The 23rd March 1866.

Government of India, Central Printing Office.—No. 125 L. D.—2-8-66.—50

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Government House on Saturday, the 24th March 1866.

PRESENT.

His Excellency the Viceroy and Governor-General of India, *presiding*.
His Honour the Lieutenant-Governor of Bengal.
His Excellency the Commander-in-Chief.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Colonel H. M. Durand, C.B.
The Hon'ble Mahárájá Vijayaráma Gajapati Ráj Bahádur of Vizianagram.
The Hon'ble Rájá Sáhib Dyál Bahádur.
The Hon'ble W. Muir.
The Hon'ble D. Cowie.

CUSTOMS DUTIES.

The Right Hon'ble MR. MASSEY moved for leave to introduce a Bill to alter the Customs Duty on the export of Saltpetre. He said—

"It is now my duty to lay before the Council the financial result of the year which expired on the 30th of April last; the results, so far as they have been ascertained, of the current year, and also the Budget Estimate for the ensuing year, 1866-67.

According to the Estimates of 1864-65, we should have had a Revenue in excess of Expenditure of £823,288.

Unfortunately those anticipations have not been realized, and instead of a surplus of over £800,000, the actual result is a deficit of £193,520, the difference, as the Council will see, being upwards of a million sterling. Now this great difference is caused by the over-estimate of a great head of Revenue, and under-estimate of a great head of Charge. The Military Expenditure had been under-estimated by more than £500,000. This under-estimate was caused by circumstances not in the contemplation of those who framed the estimate. There was a demand for increased expenditure on account

of increased price of provisions, that told on the expenditure of every Department. Besides this, there was the substitution of full for half batta. And lastly there were the expenses arising out of the Bhután War.

On the Revenue side of the account, with one exception, the calculation had been so moderate that the Revenue has yielded £327,622 more than was estimated. But unfortunately Opium, that great disturbing element of Indian Finance, failed. There was a falling off in the returns from the sale of that drug, as compared with the Estimate, of upwards of £800,000, so that, putting together the failure of Opium and the under-calculation of Military Expenditure, the result is a deficit of £193,520. For the present I will say no more upon the financial transactions of 1864-65. I shall have occasion to refer to them again; but I will now proceed to the current year, which will expire on the 30th April next.

This year has been marked by great vicissitudes. It was the misfortune of my predecessor to meet the Council at this time last year with his Expenditure in excess of his Revenue. Sir Charles Trevelyan had estimated the expenditure at £47,204,450. The Revenue derived from ordinary and existing sources was estimated at £46,488,760. The result was a deficit of £715,690, and it was deemed necessary to balance Revenue and Expenditure by resorting to other means. The means adopted by Sir Charles Trevelyan are in the recollection of the Council. He proposed by additional Customs Duties to raise £330,000. He also proposed, in consideration of the increasing Charge of Public Works and of Military demands, to recruit the Revenues of the year by a loan of £1,200,000. It was, therefore, Sir Charles Trevelyan's opinion that the normal state of the finances required only a permanent addition of about £300,000, and that occasional demands were to be met by a loan which would be a simple charge for that particular year. The result of these operations would have been to convert the deficit of £715,690 into a surplus of £874,310. Those extraordinary ways and means by which my predecessor proposed to recruit his Revenue were however disallowed by Her Majesty's Government, and the Revenue consequently fell back upon the ordinary resources, the result being that the deficit of £715,690 was reduced by only £60,000 and remained at £655,690. In the progress of the year, that unfortunate state of things was aggravated. The estimated Expenditure was increased (speaking in round numbers) by a sum of £173,000, and if the Council will allow me for one moment, for the purpose of these calculations, to eliminate both from the Budget Estimate and the Regular Estimate at which we have now arrived, a single head of Revenue, the Receipts exhibit a decrease of £422,420. Therefore, if you add the increased expenditure of the Army, and

also the decreased returns from the Revenue, to the original deficit of £715,690, you will arrive at the formidable figure of £1,250,000.

Such was the state of our affairs at the commencement of this year; and had it not been for the fluctuations of that great source of Revenue to which I have adverted, and which the Council will readily understand to be Opium, I should have had this day to meet the Council with a deficit of 1¼ million. I have shown you the effect of this disturbing element of Indian finance on the Estimates of last year. I shall now show you that, oscillating with equal violence, though fortunately this time in the right direction, it has produced a nearly equal effect on the current year. In 1864-65, Opium yielded £838,000 less than the Estimate. In the present year it will yield £915,000 more than the Estimate. Thus the effect of restoring Opium to its place in the Balance-sheet will be the reduction of the deficit of £1,250,000 to £335,000.

I now pass to the Estimates of the year which will commence on the 1st of May.

I will at once show the Council the sum total of the Balance-sheet. We estimate our Expenditure at £46,825,600. We estimate our Revenue at £46,752,800. The result is that we have a deficit of £72,800. Considering the growing increase of almost every head of Charge, and that in the ensuing year we shall be deprived of one great source of Income which has succoured our Revenue during the last three or four years—the Income Tax—I do not think that we have much reason to despair of our finances. It would have sounded better if we could have placed the small difference between Income and Expenditure on the other side of the account. But it is really immaterial whether so small a sum as £72,800 stands on the one side of the account or the other. The only question is, whether it is prudent to suffer our Revenue and Expenditure to remain nearly in a state of equilibrium. That question of course depends on a great variety of considerations, and is not to be determined by the mere result of casting up the figures.

The different heads of Revenue according to our Estimate for the coming year are for the most part in an improving condition. I cannot state that there is any great advance in any particular branch of Revenue. But I find a result which, to my mind, is most satisfactory, a gradual progression. If you look at the figures of your Balance-Sheet and find an increasing Revenue, you consider whether that increase is caused by a natural development of the ordinary sources of Revenue, or whether it is attributable to accidental causes, the recurrence of which cannot be calculated on. I can confidently tell the Council, after

careful examination of these accounts, that, so far as the Revenue shows progress, I believe that progress to be sound ; I believe that it represents a principle of progression, and that we may fairly expect that future years will show a still greater increase.

Our Revenue is in that balanced state that we have had to scrutinize every figure, because if we put down under any head more than was likely to be realized, we should be likely to disconcert the whole of our calculations. If, as in England, you have an annual surplus of millions, you may be allowed some latitude in your Estimates. It is true that our ordinary Revenue has made satisfactory progress, but it is equally true that we cannot safely look to this expansion beyond certain limits.

The Land Revenue in 1864-65 was £20,095,061. Our Estimate for the ensuing year is £20,254,300, an increase of £160,000. Connected with Land Revenue is one small item—Forests. It is of very recent origin. At present it can hardly be said to have emerged from obscurity. But still it shows a figure which exhibits a very large proportionate increase. We received from Forests in the year 1864-65 £351,000 ; we calculate on receiving in the next year £462,000.

The next head is Abkárí, from which returned 2¼ millions in 1864-65. We expect to receive in the present year something like the same amount. We have estimated only a small increase, £80,000.

Then we come to the Income Tax, which in 1864-65 yielded a sum of £1,281,817, but in the Estimate of the present year dwindles down to £10,000 which we have set down against the small residue of arrears still outstanding Thus under a single head, the permanent Revenue sustains a loss of £1,200,000 or, deducting the one per cent. appropriated to Local Works, about £900,000 ; and this important fact being kept in view, a deficit of £70,000 does not present the Revenue in an unfavourable aspect.

Customs in the year 1864-65 yielded £2,296,921. Our Estimate for the next year is £2,414,100. This is not a very satisfactory figure, for it shows that however the country may have made progress in other respects, commerce has not improved to the extent which might have fairly been anticipated, and which I hope it may attain to in future years.

I now come to the great head of Revenue which is the source of distraction to our finances, and to those who have to administer them. I refer of course to Opium. The returns from Opium in 1864-65 were £7,361,405. The

amount which we expect to receive in the current year is £8,638,000. The Estimate of Sir Charles Trevelyan was framed upon the very moderate returns for three or four preceding months. Those low figures were maintained for the first three or four months of the present financial year. There was an unusually large quantity of Opium for sale during the present year, and, upon the advice of the Lieutenant-Governor of Bengal, we limited the number of chests for next year. The result of this announcement was that the price immediately rose from Rs. 850 to Rs. 1,000 a chest, and every month has shown an increase upon its predecessors, the last sale having averaged Rs. 1,487. Considering the price which has been steadily ruling since the month of August, the Government of Bengal is of opinion that we may safely set the gross Revenue for Bengal and Behar Opium at 6¼ millions, that is, about £146,000 less than the estimated returns of the preceding year. Accordingly our Estimate for 1866-67 is Rs. 1,300 per chest, which will yield £6,240,000.

The Opium returns would have shown a still more satisfactory figure if it had not been for the minor market of Bombay. Bombay Opium, as the Council is aware, is sold on a different principle from that of Bengal. Here we have a monopoly of the drug. There we levy a pass duty. That duty is at present Rs. 600 per chest. It was calculated that £2,500,000 would have been derived therefrom this year, and the high prices quoted in China fully justified the expectation that every available chest of Opium would have been brought down to Bombay for shipment. But unfortunately the drug has come into competition with an article of still greater importance, and I believe that Bombay Opuim has been partially sacrificed to Cotton. The result is that, instead of getting 2½ millions, we shall not realize more than two millions. If Bombay Opium had done its duty as Bengal has done, instead of our having a deficit of £300,000 in the current year, we should have had a surplus to nearly the same amount.

Stamps in 1864-65 yielded £1,972,098. This year we put the figure at £2,000,660. We have no cause for making a greater alteration. I cannot safely say that I have discovered any reason which renders our Stamp Revenue in 1866-67 materially different from the results which have been attained in 1864-65.

The other items are not of sufficient importance to warrant me in detaining the Council. They vary in small sums, but they vary in such a manner as not in any degree to illustrate the progress of our finances. They are simply variations which must happen from year to year, and it would

be idle to speculate upon any cause which produces any marked difference between one minor article and another.

The total estimated Revenue for the year 1866-67 being Rs. 46,752,800, I now turn to the other side of the account. In the same way as the Revenue shows a gradual progress, so I am sorry to say, the other side of the account exhibits at least an equal progress in Expenditure. The country has become more prosperous, the necessaries of life more expensive, and the attractions which India presents have certainly not increased. The result has been, that we have had to raise salaries, to make allowances for an increased price of living, and to provide for the enhanced cost of maintaining the Army both European and Native. The charge for the Army in 1864-65 was £13,181,957. The Estimate for the present year is nearly exactly the same. The difference is £747. But the Estimate of 1866-67 is a considerable diminution on the Charge of the current year. That diminution has been caused in part by the cessation of the Bhután War, a peace having been concluded suitable to the circumstances of the case and to the character of the people with whom we had to deal. Besides dispensing with a Native regiment at Madras, certain reduction have been made in the rank and file of the Army on the representation of His Excellency the Commander-in-Chief, with the full sanction of Her Majesty's Government. Probably my Hon'ble and gallant friend will take the opportunity, before the Council rises, of explaining the grounds on which he has thought fit to recommend these reductions. Anxious as I am that the finances should be relieved as far as possible from pressure, I should be the last person to urge any reduction in our Military Force not justified by the circumstances of the country. My Hon'ble and gallant friend has, however, satisfied his colleagues and convinced Her Majesty's Government that the retrenchments which he has proposed can be safely effected. The saving will amount to more than £300,000, the greater part of which will be available in the ensuing year.

Now, Sir, the result, so far as we have gone, suggests some serious considerations. I have shown that the year 1864-65 has been ascertained to be a year of deficit. I have shown that the current year will probably also be a year of deficit; and I have laid before you an Estimate which shows a deficit for the ensuing year. In fact, the year 1862-63 was substantially the last year of surplus. The year 1863-64 certainly resulted in a nominal surplus of £78,000, but so small a sum as that makes little difference whether it stands on the one side or the other. A surplus ought to be an absolute and substantial sum, representing a positive and manifest increase of Income over Expenditure, and you cannot give such a name to the trifling figure I have mentioned. I

am justified therefore in saying that the year 1862-63 was the last year of surplus Revenue. But the year 1862-63 is an exceptional year. It is the first year that shows any results of the great financial operations commenced in 1859-60, when the finances of this country were in a most disordered state,—a state bordering on bankruptcy. It became necessary in that year, therefore, to deal with our financial system in an extraordinary manner, and the operations which went on in 1859-60 and the three succeeding years, are rather to be considered a re-construction of our financial system than ordinary adjustments between Revenue and Expenditure. In 1859-60, the Army Expenditnre was reduced from 21 millions to 12½ millions. The Civil Service had also to undergo the rigid discipline of finance. It was reduced by a million and a half. The Salt and Stamp duties were greatly increased. The Income Tax was imposed for the first time; and the year 1862-63 was the first year that exhibited the result of these enormous changes. It so happened also that in 1862-63, by one of those vagaries to which the Opium Revenue is subject, the returns were 1½ million in excess of the Estimate. The result was that the balance-sheet of 1862-63, which was prepared so as to leave a fair working margin, exhibited a surplus of £1,800,000, and although this figure was afterwards reduced by the Secretary of State, according to a mode of stating the account different to that which had been adopted here, there was still a large balance on the right side; insomuch that my predecessor announced in the following year that the reign of deficit had ceased, and that of surplus had commenced. Unfortunately that expectation has not been realized, and I have to-day to ask whether you are satisfied with a statement showing a deficit in three succeeding years. This brings us to the question. Shall Expenditure be reduced, or taxation be increased? Before answering that question, let us take a general review of our finances for the last few years. Our Expenditure in 1863-64 was 44½ millions. In 1864-65 it was 4[illegible] millions. In 1865-66 it is estimated at 47½ millions, and in 1866-67 at 46¾ millions; so that, compared with the year 1863-64, there has been on the average an increase of upwards of two millions. If that ratio of Expenditure is to go on, it is quite manifest that our existing resources cannot keep pace with it. What is the nature of this formidable increase of Charge? A part of it, and a considerable part of it, I find, is attributable to augmented establishments consequent on the increase of Income under the different heads of Revenue. Thus there are £200,000 due to Land Revenue, Forest and Abkárí. We have for some years been engaged in a revision of the whole of the country not already in settlement. The Expenditure thus incurred has been considerable, but the charge is finite, while the result will be a large permanent addition to the Revenue. I may mention that, as regards Oude alone, the result will be an increase of the Land Revenue to the extent of

£340,000 a year. Therefore, so far as the additional Expenditure is represented by an outlay of that kind, it is an outlay to produce large returns. A charge has also been incurred in improving the Income derived from Forests, resulting in an increase of one-fourth, or about £100,000 a year. The growing charge for Telegraphs will likewise be productive of Income. The large advance in the vote for Public Works represents, for the most part, undertakings necessary for the public service, but which, when completed, will entail no other Charge than the cost of repairs.

Then there is a second class of increased Charge, which, although unprofitable in a financial sense, yet in a larger view is gratifying, inasmuch as it represents the progress of the country in wealth, prosperity, and civilization. Thus we find that Law and Justice have increased by £200,000. Then Education will require an advance of £100,000 upon the vote of the previous year. Medical Services have been increased by £26,000; and even such items as Stationery and Printing show a considerable increase.

There is an item of increase not likely to recur. The charge for stores which has doubled in the last year owing to the necessity of replacing stock, and partly to the Bhután War, which, if it has not been marked by glitter and glory, has been unfortunately attended by the usual financial consequences of Military operations. Many heads of the Army Expenditure show increase. But the necessity for thrt increase I have already explained by the augmented price of the necessaries of life, which are not likely to undergo any diminution for some time to come, and therefore we must look upon the increase as permanent. Passing now to the other side of the account, since the year 1863-64 there has been a steady progress under the principal heads of Revenue, with the exception of Customs, the Revenue from which has been diminished in consequence of the derangement of trade in Lancashire owing to the American War. Land, Stamps, Abkárí, and Salt show an increase which, if not quite commensurate with the progress of Expenditure, is not very far from being so. But not to detain the Council by dwelling on minor particulars, I proceed now to give the totals. The actual Revenue of 1863-64 was £44,600,000. In 1864-65, which was the last year of the Income Tax, our Revenue was £45,600,000. That included a sum of £380,000 which Opium yielded in excess of Estimate. The Revenue of the current year is expected to result in a round sum of 47 millions, more by 1½ millions than the former year; and if we make allowance for the loss of Income Tax, the Revenue will show improvement to the extent of two millions.

The result at which we arrive then is this. So far as ordinary Revenue is concerned, on the whole, it keeps pace with Expenditure. But to make both

ends meet, we have to rely on a head of Revenue of the unstable and capricious character to which I have so frequently adverted. In order to maintain our financial system on its present footing, we must depend upon Opium. But the whole blame must not attach to Opium. There was on the other side of the account a disturbing element of Charge. I mean the great vote for Public Works. But there is this difference between Opium and Public Works, that although they are both disturbing elements of finance, you have little or no control over the one, whilst you have an almost absolute power over the other; and if you wish to maintain anything like equilibrium between your Receipts and Expenditure for the next three or four years, you must not allow this vote to have its own way. I know it will be said that the vote is practically uncontrollable. The promoters of Expenditure under this head invariably say that it is necessary and urgent; but whether it be a Barrack, a Church, a Dock or Road, any one of these charges can be postponed to a more favourable season if brought forward at a time when our finances are not in a condition to meet it. The Estimate under this head comprises not only Charges for Public Works, the sanction of which is optional, but also items which are debitable rather to Capital than to Income. If we had a flourishing and redundant Revenue, it might not be worth while to discriminate between these items; but if taxation is to be kept within the limits prescribed by the ordinary demands of the public service, this vote must be subjected to a rigid scrutiny. It has grown from £4,400,000 in 1862-63, to £5,350,000 in 1865-66, with an Estimate for more than a million in advance of this sum in the ensuing year.

I am afraid I am wearying the Council. But our Revenue is in such a state that a close examination is necessary in order to understand it rightly. If the finances of India were wholly dependent from year to year on the Balance-sheet, they could not be safely left in a condition which provides no resource against these emergencies, to which every Government, and perhaps this Government especially, is liable. But we have such a resource in our Cash Balances. Owing to the peculiarity of our administration, the public monies, instead of being collected in two or three depositaries, are diffused through a great number of Treasuries and Collectorates scattered through the country; and the consequence is that a far greater amount of money is required to be kept in reserve for the public service than would be necessary under a concentrated system. As the country is opened up by railroads, we shall be able to dispense with many of the minor treasuries, and in proportion as they disappear, we shall be able to work the Government with diminished balances. At present we require about ten millions; all that we have beyond this amount is available for other purposes. The Cash Balances for the year

1864-65 were estimated at £11,417,000; but the closing balance actually ascertained on 30th April was £12,638,897. The Cash Balance, which was estimated by Sir Charles Trevelyan for the year about to expire, was £10,860,000. It is now estimated at £12,859,000. That difference is attributable mainly to the large increase of railway trarffic receipts, and another cause which I am sorry to mention. It may not have escaped attention that although Sir Charles Trevelyan was deprived of Revenue to the amount of 1½ millions which he had calculated upon, and that this was compensated only to the extent of £915,000 from Opium, yet that the deficit amounted to no more than £335,000. The fact is that we received exceptional aid from the Home Government. In the original Estimate from Home for the current year, the Secretary of State proposed to draw upon India to the extent of £800,000 more than his drafts actually reached. But unfortunately the expenses of the Home Government did not admit of retrenchment to a corresponding amount; and the money was obtained by the sale of stock, the proceeds of which were credited in the Home Accounts. The transaction, though it does not appear in our Balance-sheet, has in fact added £800,000 to the Balances. We have estimated the Cash Balance on the 1st of May 1867 at £10,506,000.

Considering then that, on the whole, our Revenue keeps pace with our Expenditure; that though we have, it is true, one great irregular source of Revenue, yet one that is capable of being calculated upon data which yield an average Income in a series of years; considering also that there are large items in our Expenditure not likely to recur; considering the state of our Cash Balances, more than two millions in excess, we have come to the conclusion that there is no necessity this year to impose fresh burdens on the people. I will only answer for this year, because if a coincidence so improbable should happen as a great failure of ordinary Revenue and a great sinking of Cash Balances, you must be prepared promptly and vigorously to meet such a state of things by new taxes.

I have not the least doubt that, if an unforeseen necessity arises, there will be no difficulty in raising additional funds. There is one great source of Revenue which we have abandoned, to which we shall recur if necessary; an Income Tax, so assessed as to reach those who are able to pay, would be far more productive than that which has recently expired. There are many Charges debited to Imperial Revenue, which might be transferred to Local Funds. I hold in my hand a paper showing that the actual sum received from Local Funds in 1864-65 was £2,451,000. So far from our being enabled to calculate on any advance on that moderate figure this year,

we are obliged to estimate for a smaller sum, only £2,329,000. It is impossible to believe that the capacity of this country to contribute to local objects is measured by such a sum as 2½ millions. I do not want to quote the precedent of England. But I may just remark that England, besides a Revenue of £70,000,000, pays £17,000,000 by voluntary assessment for local objects. I do not say that it is practicable to raise such a sum as that for local purposes in this country. But surely the disproportion between these two figures might be reduced, and we might fairly expect that, on a re-distribution of our burdens, we may look to the Local Governments to raise, by local taxation, a sum which will relieve us to a certain extent from Charges which properly belong to Local Revenue, and unfairly find their place in the Imperial Accounts.

There are certain great Public Works in which the people of India are especially interested. I mean Irrigation Works. I hope it is probable that in the course of the ensuing year the remodelled plan of the Ganges Canal will be undertaken, that certain works on the Godavery will be prosecuted, and that the Baree Doab Canal will be proceeded with. With regard to the Ganges Canal, the plans have been prepared by Captain Crofton, and have been submitted to a Committee of Engineer Officers, whose report will, I hope, be received in time to enable the works to be commenced this year. The works on the Godavery are under the direction of Major Haig, and I understand that that Officer, who is now in England, in communication with Her Majesty's Government, has devised a plan by which those works will be brought to a successful termination. And as to the Baree Doab Canal, I hope there will be no material obstacles to its progress. But it is impossible to say with certainty whether any of these works will be undertaken at all this year. We have roughly estimated the cost of these works at about 1½ millions, of which something less than £300,000 will come into Charge during the ensuing year. No provision has been made for this Expenditure in the Estimates; and for this reason, that they are works of a totally different nature from Ordinary Public Works. They belong to a class called Reproductive Works, that is to say, works the Expenditure upon which is likely to prove a profitable investment of capital, and it is the desire of the Secretary of State that works of this sort shall be provided for out of surplus Revenue, the available surplus balances; and failing these, by loan. Of course we have this year no surplus Revenue. There will however be available balances adequate to the moderate demands which may be expected in respect to these works, so that there is no probability that it will be necessary, during the course of the year, for the Government to propose a loan.

The vigorous prosecution of Irrigation Works has been delayed by various causes. There have been in the first place very considerable discussion and doubt as to the agency by which these works shall be done. The Government of India has expressed an opinion in which Her Majesty's Government concurred, that works of this character, so likely to be productive of Revenue, should be retained in the hands of the Government, and conducted by Officers acting under its orders, and defrayed entirely from Revenue raised on its credit. On the other hand, there have not been wanting many advocates of private enterprize. I may say at once that the field is ample for both. I concur, however, generally, in the opinions which were expressed by the Government of former years that, all other conditions being favourable, the construction and management of these works should be undertaken mainly by the State. It is of paramount importance, however, that the works should be done, and if they are to be undertaken and vigorously prosecuted, I do not see how it is possible to dispense with the co-operation of private enterprize.

There has been another reason, I know, assigned why the Government should maintain works of this kind in their own hands. It has been said that it is not right to abandon the Natives to the mercies of Joint Stock Companies. For my part I am not pressed by the force of that objection. This country had for a century, until indeed the other day, been governed by a trading corporation, and I am not aware that the rule of the great Company which has passed away contrasted unfavourably either in generosity or humanity with the Government of the Queen. But whatever force may be attributed to an objection of this kind, I still recur to the overwhelming necessity of executing these works. It is not a question merely as to who shall derive the enormous profits of these undertakings—whether they shall go into the treasury of the Government or the pockets of shareholders in Companies. It is a question of far greater magnitude, involving public health and the lives of the people. If that is so—and no man denies it—is it becoming that we should permit unnecessary delay in the prosecution of those undertakings for the sake of any financial reasons whatever? I am the last man to relinquish any available source of Revenue, and I am very sure that works of this class are capable of furnishing in future years ways and means which would greatly tend to diminish the anxieties of a future minister of finance. But there is an over-ruling necessity which peremptorily demands that these undertakings should not be neglected or delayed. We must not, therefore, discourage the co-operation of private Companies which can satisfy us that they can command the means and mechanical ability to construct such works. Even if it were possible for the Government to undertake an enterprize so vast as the construction of the whole of the Irrigation Works

which India requires, I say we might still yield a very large portion to private enterprise, and retain what would be amply sufficient to occupy our time and our resources.

That being the case with regard to the question of agency, we have had another difficulty to encounter. We have had differences of opinion—differences very likely to arise between eminent Engineers—as to the mode in which these works should be carried out. I should rather say that there has been a conflict of opinion between two schools of Engineers on the subject. While that conflict was raging, it was difficult for an unskilled Government to take upon itself to pronounce an opinion. But steps have been taken to reconcile these conflicting opinions, and I am sure that the ability and zeal which actuate the professional men who have given their time and talents to project of this magnitude may be relied on to remove minor causes of difference and to reach some practical conclusion, advantageous to the country, conducive to their own fame, and satisfactory to the Government.

There is a third hindrance which has also obstructed the progress in Irrigation Works, and that is a financial one. It is manifestly impossible to meet demands of this sort out of Ordinary Revenue, and therefore you must either fall back on your Cash Balances, which you cannot safely depend upon to yield enormous sums, or report to a loan. The state of the money market in England, overwhelmed as it is by projects of every description, is not very favourable to Indian loans. But I am not without hope that well-considered plans of Irrigation Works may prove attractive to Indian capital when I consider the vast results which have already been accomplished in this field of enterprize. At all events the experiment should be tried; and in no case can it be maintained that an Expenditure of some thirty millions presents an insuperable difficulty, or indeed a formidable obstacle, to the execution of designs more conducive to the prosperity of the country and the welfare of the people than any which the well-wishers of both have yet been able to realize.

I must not omit to mention a fourth difficulty which has hitherto stood in the way of these operations, and that is the condition of the labour market. Alarm has been felt in high quarters lest works of this magnitude should over task the swarming mulitudes of India, and that the ordinary demands for labour would be left unsatisfied by the competition to which they would be exposed. Such apprehensions were felt in England when the Railway system was introduced. I need hardly say that they were found to be futile; and though the conditions of the labour market in England are in some important particulars different from the conditions of the labour market in India, there

are elements enough common to both to justify us in believing that, here, as in England, there is no cause for such alarm, and that the fear of overtaxing labour has been greatly exaggerated.

I have thought it my duty to state the reasons which have satisfied the Government that the mere fact of a small deficit is not sufficient to warrant new taxation. I hope those reasons will be found satisfactory. But I must not omit to mention that there is one very small tax—not indeed so much a tax as a fiscal arrangement—which I must ask you to sanction. There is at present a difference in price between Bombay and Madras Salt. The Salt Revenue in Bombay is raised by an ordinary excise duty. But in Madras the Government itself buys the Salt, and adds an amount of Revenue equivalent to the duty raised in Bombay. Now the cost price of the manufacture in Madras has increased by about three annas, while the price charged by Government remains the same, *viz.*, Re. 1-8-0. The consequence is a difference of about three annas in favour of Bombay. We have thought fit, therefore, with the assent of the Madras Government, to make a small addition to the price of the Madras Salt, which will make the duty equivalent to that which is obtained in Bombay.

The financial result will be an additional Revenue of about £135,000, and that is the only tax which we propose.

Of course we are not in a position to propose any remission of taxation. But there is one article which it is necessary to deal. Some years ago, Mr. Wilson expressed a hope that the Customs Duty from Saltpetre, which then only paid a three per cent. *ad valorem* duty, might be made to present a respectable figure in the Revenue. That expectation has been wholly disappointed. The augmented duty was first fixed at two Rupees, and afterwards reduced to one Rupee a maund. Notwithstanding that deduction, the Indian article was found unable to compete with the new manufacture in Europe, and the trade in Saltpetre became and still continues in a very languishing state. It is not, however, desperate; and there is no reason to hope that the manufactured commodity will not, in the long run, supplant the Indian article when relieved from the weight of taxation with which it is now oppressed. We propose therefore to repeal the duty of one Rupee per maund, and to restore the former duty of three per cent. *ad valorem*.

These are the only changes which we propose to make. But the whole of the Customs Duties will undergo revision, with a view to the classification and re-adjustment of the Tariff. This, however, we shall reserve for a future year.

With these observations, I beg to move for leave to introduce the Bill.

The Hon'ble MR. COWIE said that, at the risk of again falling under His Excellency's censure for holding unorthodox opinions, as was the case at that period of last year, he again recorded his opinion that large Public Works of great and enduring utility ought to be provided for by loans extending over a moderate term of years, instead of being, as at present, taken out of the Revenue of a single year. That was the practice followed by municipalities, by European landlords and by others, and he held that it would be judiciously followed by Governments also. The Right Hon'ble gentleman had happily been able to show an estimated deficiency of only six lakhs of rupees. If in the course of the year, or at its close, that state of things should materially alter for the worse, he trusted he would resort to a loan, on the principle to which he had referred, in preference to falling back on the much abused Income-tax, or in fact, of resorting to any taxation at all.

There was a minor feature in the Right Hon'ble gentleman's able address on which he wished to remark. It was the retention of any duty on Saltpetre. Our Finance Minister, in his Statement of Objects and Reasons, admitted that the high duty had acted injuriously on the trade. It had done so, and that for a length of time, and he thought manufacturers and exporters of the article were now fairly entitled to have it placed on the free list. With His Excellency's permission he (MR. COWIE) would propose an amendment to that effect.

His Excellency the COMMANDER-IN-CHIEF said—"At the instance of my Right Hon'ble friend, I depart from the rule which has hitherto obtained in the transactions of the Indian Government. I allude to the reticence which has invariably been practised by those placed at the head of great Executive Departments. I hold strongly to the opinion that such reticence is advantageous neither to the public nor the Government, when recommendations are to be considered which have been turned into practical measures, and those measures have become accomplished facts. Still the rule existed, and had I not been invited by my Right Hon'ble friend, I ashould have felt myself bound by it. With regard to the recommendtions referred to by my Right Hon'ble friend, I would remind the Council that, when I first joined this Government, I was requested by your Excellency in Council to consider if it were possible to propose any measures of military economy which, without impairing our military strength, and therefore our political security, might conduce to further the purpose more immediately suggested by my Right Hon'ble friend. For two or three months I gave the utmost attention to the subject, with the assistance of the gallant Officers more immediately under my orders. The result was that, after careful consi-

deration, I was able to propose that a plan should be followed in this country similar to that pursued in England, namely, to reduce the aggregate numbers of the British part of the forces by operating on the rank and file, without diminishing the number of the heads of troops in the several centres of population, by which the sense of military strength is actually made present to the whole population at large. Such a proposal was accordingly made by your Excellency's Government to the Right Hon'ble the Secretary of State. But I may be asked how I would justify the course I thus ventured to prrpose. That, Sir, depends on the vast strategical change effected in this country by the development of our new means of communication. Thus, in old days, there was no communication between the three Presidencies by railway, or steamer, or even by common roads. The minor Presidencies of Bombay and Madras were, for the purposes of war, as much separated from that of Bengal as England is now. If a great war broke out in the North-West, the Armies of Madras and Bombay might be a distant reserve on which to draw eventually, as is the case now with Her Majesty's forces in Great Britain. But they were practically useless for the purpose of an effective military combination in the execution of the immediate campaign.

What is the case now? The barriers between the Presidencies have been virtually swept away, and our troops are moved with a rapidity and an exactness which can alone be appreciated by those who have to direct them. Thus I may mention that a regiment is suddenly placed under my orders on arriving at Fort William from England. Within a week it is comfortably housed in its new quarters at Agra. Such an instance actually occurred a few weeks ago. I may give another illustration in the movement of the corps directed in the late operations of Bhutan. With your Excellency's entire concurrence and sanction, I declined to move a man till the very unhealthy season of the Bengal Dooars should have passed away. I felt that two nights passed in September or October in the Dooars would entail a heavier loss on our troops than any mischief that would have been caused if the whole military force of Thibet and Bhutan had been directed against General Tytler. Sir, with your entire concurrence, notwithstanding considerable pressure from the outside, I remained firm in this matter. Well, was any inconvenience caused? Was any political delay entailed? Was the campaign protracted? On the contrary, such is the perfection of our communications, by steam and rail—such was the dexterity with which those means were applied by the Officers under the orders of the Commander-in-Chief, as well as by my gallant friend the Commissary General, and his assistants,—that the regiments arrived with the greatest exactness, after traversing distances varying from 1,500 to 500 miles, at

the time they were wanted, with a rapidity which would have been inconceivable before the existence of Railways. With such evidence before us of what I have ventured to call the strategical change effected in this country by the construction of our new communications, is it wise, is it reasonable, is it to be supposed that we should not apply the principles here displayed for the purposes of military economy? I venture to say that there is no military man who has studied the theory as well as the practice of his profession who would not agree with me that this question should be answered in the negative.

I have already referred to Bhutan affairs, but as I am in the course of making explanations, I think it right to allude more especially to the strange misapprehension by which the public mind has been perverted. It has been declared that the honour of England has not been supported, that her reputation has been stained and her name disgraced, because we declined to press with what might approach to cruelty on a miserable and wretched people lying at our feet.

What are the facts? The Government of India had already inflicted heavy punishment on Bhután. A proclamation had been issued by which a large slip of Bhután territory had been annexed. Was it to be supposed that a people which, however barbarous and untaught, at least possessed the attribute of animal courage, would submit to the loss of a slip of territory which, in their eyes, was probably as valuable as the territory that remained to them—I say, was it to be supposed that a people in such circumstances would not stand up and fight for their own property? Surely nothing else could be expected, and the Bhuteas are hardly to be blamed on that account. Yet, that was the head and front of their offending, which raised such a cry for more punishment. They stood up and fought, and I can only say that they are in my opinion to be respected for so doing. People clamoured for more punishment—for what?—because the Bhuteas came and re-occupied a few posts. What really took place? The first duty I had to perform on assuming my command was to receive the reports of the heavy blows delivered by Generals Tytler and Tombs at Bala and Dewangari. I am justified in attributing that character to them, because, when the small number of the Bhután population is considered, the actions they fought with respect to the losses they incurred, must have assumed in their eyes such proportions as in great European contests would be attributed to pitched battles. This is undoubtedly true, notwithstanding that to us such actions appear as insignificant skirmishes. I say it with confidence. The numbers of Bhuteas reported to have been killed in General Tombs' affair having been reported to be 200. I ask with confidence if this was not a terrible retribution, with regard to the numbers of the Bhután population, for the

check sustained by our arms at Dewangari? I am happy to say that such was the opinion of your Excellency's Government. If we had further pressed this miserable people for the purpose of inflicting a still greater summary punishment, we should have laid ourselves open throughout the civilised world both in India and in Europe, and even with those who had been most impatient at our assumed inaction, to a charge of inhuman oppression, and, I think I may say, cruelty. I am happy to think that this Government has escaped such a stigma. We are saved from shame on such account. The Bhuteas, as soon as it could be arranged, shewed themselves anxious for peace and made overtures. They are however a fickle and unstable race, and their temperament is represented as most uncertain. It was therefore obviously necessary to take precautions that their overtures should have a basis of certainty and truth, and to guard against disappointment in the event. To do so, it was necessary to continue the military demonstration and so to support our diplomatic action. Sir, in the conduct of these affairs, the Government of India followed a policy worthy of itself, in declining to carry on a little war with a wretched State, whilst it really prosecuted war as a great Empire should in such circumstances The Council will recollect the Duke of Wellington's objections to what he called "a little war." He did not mean that it might not be necessary to punish a barbarous tribe, but he did mean that, when required, the conflict should be carried on by means of the magnificent momentum of the Empire, by which blood and misery would be saved, instead of by engaging in petty and partial conflicts with combatants on equal terms. Well, Sir, such is the policy pursued by the Government, a policy by which all the evils of war have been saved to Bhután, its overtures having grown into a mission, the mission to a treaty, while the heavy penalty originally decreed was exacted from Bhután on account of former misdeeds. Thus was the object effected without loss of life and the glitter of arms to which my Right Hon'ble friend has alluded. The last man sacrificed in this conflict with a wretched people was slain, I believe, in March last. That was most satisfactory, although the ardent spirits on the frontier were doubtless anxious for war, a feeling with which, as a soldier, I can sympathise.

When I come to consider the Military Estimates, I cannot but admit that the administration of the Army must follow the law of civilisation. Thus the means which we have to employ, the rules we have to follow, become more and more artificial. We have to consider the demands on account of education and improved appliances, and such matters as short enlistments and the fact of the many walks of life which now attract the men who formerly had little but the Army open to them. These considerations all involve higher Estimates. Then we have to think of the rise in prices which affects the

people under my command in an extraordinary manner. I cannot exaggerate the pain with which I have contemplated the struggle which many of them have to make in consequence. This applies equally to Subaltern Officers, to Non-Commissioned Officers, to the Soldiers and their families, and to all ranks of the Native Army, from the Subadar downwards. It has been my duty during the last five or six years, both when I was serving under the Bombay Government and since I came here, to make urgent representations on this account, and frequent requests. Those representations have been met with liberality by the Government, and have added to the Estimates in consequence. But I fear the cause is permanent, and I do not share my Right Hon'ble friend's hope of the possiblity of reduction on such account. When I was in the Bombay Presidency, I carefully compared the returns of prices for the last twenty years, more especially with regard to the subject we are now considering, namely, the lot of the people under my command. And I found that, during twenty years, with the exception of one single year, the rise of prices had continued from year to year, or in other words, that the change of values was constantly going on. I believe that last year this rise culminated in Bombay. The extraordinary high prices were not confined to the Presidency Town: they spread throughout the Presidency, the prices being equalized by the railways.

To turn now to the subject of Military Public Works, I think I can show that there is some consolation for my Right Hon'ble friend. At present, owing to the very temporary nature of a very large proportion of military buildings, the annual repairs amount up to enormous sums, namely, to ten and fifteen, and as I am told in some cases perhaps even to twenty per cent. on the cost of construction. Now, when the Public Works Department shall have completed thoroughly a system of permanent barracks, one hitherto never-ceasing item of Expenditure in that Department will almost disappear. Thus it may be said that the construction of such permanent buildings comes to bear the character of a sinking fund; that is to say, that a large Expenditure is incurred for the future as well as for the present, or, in other words, that such permanent structures might fairly be charged against Capital instead of Revenue. I am justified in this view by the analogous case of the fortifications for the coast of England, which Parliament determined to charge against Capital, and not to Revenue. It was resolved by my Right Hon'ble friend, and I think with great propriety, that the course adopted by Parliament in the case of the fortifications should not be followed in this country with respect to the barracks. His reason was that he saw that, notwithstanding the vastness of the projects for military buildings, it would not do to encumber with loans on such account the market which might have to meet the

demands of another great cause of Expenditure of a reproductive character, on which my Right Hon'ble friend has dilated with so much truth and eloquence. I might say that the necessity for building these barracks is such that the task can no longer be put aside. It will be understood that I make no reflections on my predecessors in command, or on other Governments. But I have no hesitation in saying, that many of the barracks throughout the country are such as we are not justified in continuing for permanent occupation. It is absolutely impossible to allow the troops to continue to lodge in them. This great stress was caused, not by any fault of my predecessor in the command, but by the fact of the doubling of the European force in 1858, since which date the troops had been put up as well as circumstances admitted.

There has been great consultation between the Government and the Secretary of State, and between Commissions at Home and in India. I am happy to say that the phase of consultation seems now to have passed, and that we are entering on that of action. So it happens that nearly two millions are set aside for military buildings in the Estimate—or rather more by a million than is usually so devoted—of the year. So urgent is the necessity, that I would express a confident hope to my Right Hon'ble friend, that even if Opium go down, the barracks will nevertheless go up.

There is one more point to which I will advert. I have noticed in the most influential public prints in England and other influential quarters, that a great misapprehension prevails regarding the strength of our Native forces in this country. Such statements have been made and argued on with so much force, that I believe it is right to contradict them with authority. Thus it has been said that the numbers of our Native Armies are so large that they interfere with the great objects of economy aimed at by my Right Hon'ble friend, and that those Armies are on such account a cause of just alarm. I consider that such statements are wholly unfounded. I hold in my hand returns shewing the comparative strength of the Native forces in the month of January, in the years 1856 and 1866 respectively. I quote from the abstract, by which it appears that, on the 1st January 1856, the Native forces under the Commander-in-Chief and the Government in the Bengal Presidency amounted to 160,129. In the same month of 1866, the two sets of forces stood at 61,499; the reduction thus shewn amounting to nearly 100,000 men in the Presidency of Bengal. In Madras, in 1856, the forces stood at 57,265. In 1866 the same Army stood at 33,187. In Bombay, the forces under the Commander-in-Chief and under the Government amounted to 38,850. In 1866, they were a little over 25,000. Having called for those figures yesterday, I cannot answer for the perfect accuracy of the numbers stated for

the two minor Presidencies. But I am able to say, from my own knowledge, that they are sufficiently exact for the purposes of this statement. I have chosen the year 1856 for one of comparison, as while it was one of peace, it preceded the great disruption which led to the re-organization of our military system.

In conclusion I would observe, that the Officers directing the Departments of the Army give the utmost satisfaction to the Government, and this not only as respects the performance of their military duties, but also as conducing by the advice they afford me, to the economy of the State."

The Motion was put and agreed to.

The Right Hon'ble MR. MASSEY having applied to His Excellency the President to suspend the Rules for the Conduct of Business.

The President declared the Rules suspended.

The Right Hon'ble MR. MASSEY then introduced the Bill and moved that it be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. COWIE moved as an amendment that the article of Saltpetre be placed in the free list.

The Right Hon'ble MR. MASSEY said that he had received representations from various quarters urging the reduction, but in only a very few instances requiring the total repeal, of the duty. The better opinion—if his Hon'ble friend would forgive him for saying so—was that the more moderate course which he proposed was sufficient for the present. If that concession should prove to be insufficient, the Government would be willing that Saltpetre should be placed in the free list. But he was not disposed in the present state of our finances to make any concession further than was necessary, and he hoped that his Hon'ble friend would allow the experiment to be tried during the present financial year.

The Hon'ble MR. COWIE said that he had had no communication with any gentleman connected with the Saltpetre trade, but that he had moved his amendment from a sense of justice to the manufacturers and exporters of the article. After what had been stated, however, by the Right Hon'ble gentleman, he begged to withdraw his amendment.

The Motion was accordingly withdrawn.

The Right Hon'ble MR. MASSEY then moved that the Bill be passed.

The Motion was put and agreed to.

SALT (MADRAS) BILL.

The Right Hon'ble MR. MASSEY moved for leave to introduce a Bill to enhance the price of Salt manufactured and sold under the orders of the Governor of the Presidency of Fort Saint George in Council.

The Motion was put and agreed to.

The Right Hon'ble MR. MASSEY having applied to His Excellency the President to suspend the Rules for the Conduct of Business,

The President declared the Rules suspended.

The Right Hon'ble MR. MASSEY then introduced the Bill and moved that it be taken into consideration.

The Motion was put and agreed to.

The Right Hon'ble MR. MASSEY then moved that the Bill be passed.

The Motion was put and agreed to.

The Council then adjourned till the 31st March.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Dept. (Legislative.)

CALCUTTA,
The 24th March 1866.

Government of India Central Printing Office—No 5 (J) L. D.—5-4-1900—80—Good.

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Saturday, the 31st March 1866.

PRESENT:

The Hon'ble H. Sumner Maine, Senior Ordinary Member, *presiding*.
His Honour the Lieutenant-Governor of Bengal.
The Hon'ble W. Grey.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Mahárájá Vijayaráma Gajapati Ráj Bahádur, of Vizianagram.
The Hon'ble Rájá Sáhib Dyál Bahádur.
The Hon'ble W. Muir.
The Hon'ble D. Cowie.

REGISTRATION ACT AMENDMENT BILL.

The Hon'ble MR. TAYLOR moved that the Report of the Select Committee on the Bill to amend Act No. XVI of 1864 (to provide for the Registration of Assurances) be taken into consideration. He said that the Council had been made aware by the motion which stood in his name in the list of business for to-day, that he had taken charge of the Bill which was introduced and brought almost to its final stage by their late colleague, Mr. Stewart Gordon, whose premature removal from among them they all so deeply deplored. On the last occasion of his attendance in this Council chamber, Mr. Gordon presented the Report of the Select Committee, which he (MR. TAYLOR) had now the honour to ask the Council to take into consideration. As this Report explained very fully the nature of the amendments and the reasons for the various alterations proposed by the Committee in the Bill as introduced, he should not detain the Council longer than was necessary to enable him to notice very briefly the few prominent points that seemed to call for remark.

Two of the most important Sections of the Bill were Sections 17 and 18, relating to registrable documents—Section 17 to instruments the registration of which was compulsory, and Section 18 to documents of which registration was optional. They had carefully considered the question of enforcing the compulsory registration of all instruments relating to immoveable property. As the law now stood, the registration of such instruments was not compulsory

if the value of the property to which they related was less than 100 rupees, and under the present Bill this exemption was continued. No doubt it was extremely desirable that all such instruments should be registered, however small in value the property might be to which they related; but for the present they thought it better to leave it to the option of the parties whether instruments relating to property of trifling value should be registered or not. It formed indeed no part of the intention with which this revision of the law was undertaken to extend the area of compulsory registration. Notice had not been given to the public of so important a change. It was true that there was a strong and growing feeling in favour of such extension; but they were on the whole of opinion that it would be wiser to invite, through the local administrations, a full expression of public opinion on this important question before legislating further in this direction.

This led him to notice an alteration which they had made in the definition of this word "Lease" which occurred in Section 2. It was now made to exclude the pattás and muchilkás of the Madras Regulations, as defined in the Rent Recovery Act, No. VIII of 1865 (Madras). Under the Registration Act of 1864, all leases between landlord and tenant, relating to land in the Madras Presidency liable to the payment of revenue to Government, were exempted from compulsory registration, and this exemption was continued in the Bill as introduced. It had been ascertained, however, that all that was desired by the Revenue Authorities of that Presidency was that the general requirements of the law should be inapplicable to leases for one year and under; and there was really no reason why leases for longer periods than one year should be treated in Madras differently from similar leases elsewhere. The requirement of compulsory registration, while it gave additional security to both parties, was not likely to check the use of written agreements to any perceptible degree. But, looking to the importance of encouraging registration of leases by every legitimate means, he would commend to the careful attention of the Local Governments the remarks of the Select Committee in favour of charging the lowest possible fee for the registration of this class of documents.

An addition had been made to Section 21 of the Bill, providing that a conveyance containing a plan should, on presentation, be accompanied by a copy or copies of the plan, as the case might be. Such conveyances would generally be unintelligible without the plans, and it was quite out of the question that a staff of draftsmen should be employed in Registration Offices to copy them. He would here correct a misapprehension which seemed to have prevailed in some quarters, as to a provision in a former portion of this Section. After laying down that the property should be clearly and fully described in the instrument presented for registration, the Section went

on to say that the description should contain, whenever it was practicable, a reference to a Government map or survey. By this of course it was not intended, as some had supposed, that every Registering Office in the country should be supplied with standard plans and maps for verifying descriptions of instruments brought for registration. But whenever it was possible to describe a property by reference to any such map or plan—as, for example, in the case of military cantonments—the person presenting the instrument for registration would doubtless produce if required, for the satisfaction of the Registering Officer, the map or plan to which he had referred.

Section 41 provided that all memoranda or orders sent by the Civil Courts should describe the property with as much particularity as possible, that is, in the manner required by Section 21 which he had just noticed. It was clearly important that the description of immoveable property should be as specific as possible, and that there should be no mistake as to the identity of the property to which the decree or order referred.

Section 48 was a new and important provision. It gave all registered documents relating to property effect against all oral agreements and declarations relating to the same property. This priority of registered documents, as against all oral agreements, was an entirely novel feature in the law of this country, and would have, it was hoped, a most beneficial effect in checking perjury and preventing frauds for which the present state of the law provided no remedy.

The Committee had made a very important alteration in the mechanical part of the Bill, by the abolition of abstracts of the contents of documents registered, and the substitution in their stead of copies of entries in the indexes. This improvement had been strongly advocated from many quarters; it would get rid of an immense amount of labour, and attain all the objects which the present system was intended to effect.

There was no other amendment which he need specially notice. He might add, however, that various communications had been received from the Governments of Bombay, Madras and the North-West, forwarding some further remarks and suggestions of the several Registrars General, many of which were of great value and had been adopted by the Committee in the Bill as now amended. Within the last few weeks, a letter had also been received from the British Indian Association, suggesting a few alterations, the most important of which had already engaged the attention of the Committee and were effected. The Association noticed some points of a purely administrative character, which might safely be left to be dealt with according to the discretion,

or indeed the common sense, of the Registrars General. On the whole, the Bill had been favourably received in all quarters, and there was a general concurrence of opinion that this important measure was a great improvement on the old law, and likely to prove in every way extremely beneficial to the country.

He could not conclude without saying one word more. After the well-deserved tribute which, on a recent occasion, His Excellency the Governor-General had paid to the memory of the late Mr. Stewart Gordon, it was perhaps unnecessary that he (MR. TAYLOR) should allude to his merits, or to the high esteem in which his character and talents were held by his colleagues in Council. As one of the Select Committee who had special opportunities of observing and appreciating his useful labours in connection with this Bill, he might, however, be permitted to say this at least, that the Council had sustained a loss that would not be easily supplied. He did not doubt that this opinion was shared by the President as well as by all who had had official relations with the deceased gentleman. The name of Mr. Gordon would always be associated with this revision and amendment of the Registration Act, and when his Bill became law, which he hoped it would to-day, it would stand in the Statute Book as a memorial of the patient industry, care, and ability he devoted to its preparation.

The Motion was put and agreed to.

The Hon'ble the PRESIDENT said that he had an amendment of his own to propose in the Bill. Perhaps the Council would recollect, the subject was last under discussion in public when the late Hon'ble Stewart Gordon introduced the Bill. Since then the Select Committee had held many sittings on the measure, and the patience, sagacity and candour which Mr. Gordon showed, were the admiration of every body who was associated with him. Mr. Gordon, when the Bill was submitted to the Council, mentioned that a memorial had been received from certain Indigo Planters of the North-West Provinces. He read (if MR. MAINE did not mistake) the same sentences which he (MR. MAINE) now proposed to read. The Secretary to the Government of the North-West Provinces said:—

"It is represented by the memorialists that the provisions of this Section [17], which make the registration of a lease for any period exceeding one year compulsory, affect them seriously, inasmuch as the indigo operations of the year necessarily involve possession of the lands for 15 months. The lands are rented under the agreement that the Planters are to have possession of them as soon as the annual rains set in, and keep them until the close of the rains in the following year, that is, until such time as the Khuntí crops are cut.

The Planters also state that, as the lands taken from the zamíndárs are generally small, it is not worth the zamíndár's while to waste time in going to the Registration Office and to incur the expense of having the deed registered. The Planters must therefore either refuse to

make the necessary advances, or they must rent the lands and run the risk of having the agreements found to be invalid, and give the assamees the opportunity, under the clause, of taking possession of the lands at the expiration of a year, and with them of the Khuntí crops."

Mr. Gordon observed, on these sentences, that the proposal of the Planters ran counter to the probable course of legislation on this subject. He anticipated—and no doubt this was true as regarded the greater part of India—that the next change which would probably take place would be to make the registration of all documents relating to immoveable property compulsory. But Mr. Gordon was in all probability not aware of the importance of this question. MR. MAINE had been in communication with a late colleague of theirs, Mr. Hamilton, known to them as Mr. Claude Brown, and Mr. Hamilton had assured him that the Planters would be driven either to neglect the Act, or to give up the cultivation of the plant altogether. But now, on referring to a very famous document in his hand (the Report of the Indigo Commission), he found that, while admitting that planting in Bengal was subject to animadversion, the Commissioners exempted Planters in the North-West and in Behar from the censure which they were compelled to give in other quarters. This was a purely local matter, but he thought that we might fairly give the required relief to the case. He therefore proposed to add to Section 17 this proviso:—

"Provided also that, so far only as regards the Territories respectively under the Governments of the Lieutenant-Governors of Bengal and the North-West Provinces, the Local Government may, by order published in the Official Gazette, exempt from the operation of the former part of this Section any leases of immoveable property, executed in any particular district or part of a district, the terms granted by which shall not exceed two years, and the annual rents reserved by which shall not exceed fifty Rupees."

Mr. Hamilton was of opinion that this would entirely meet the case, and that no greater exemption was required than as to small leases, that is, leases at rents less than Rupees 50 and for terms less than two years.

The Hon'ble MR. TAYLOR said that he entirely concurred.

The Motion was put and agreed to.

The Hon'ble MR. TAYLOR said that he also had a series of amendments to propose, none of which were of very great importance.

The first was that, for Section 36, the following be substituted:—

"Subject to the provisions contained in this Section and in Sections 76, 80, 84 and 89, no document shall be registered under this Act unless the persons executing such document, or their representatives, assigns or agents authorized

as aforesaid, appear before the Registering Officer. He shall thereupon enquire whether or not such document was executed by the persons by whom it purports to have been executed, and, in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

"If all the persons executing the document appear personally before the Registering Officer and are personally known to him, or if he be otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution of the document;

"Or, in the case of any person appearing by a representative, assign or agent, if such representative, assign or agent shall admit the execution;

"*Or, if the person executing the document shall be dead, and his representative, assign or agent shall not appear before the Registering Officer, or shall refuse to admit the fact of execution, but such Officer shall nevertheless be satisfied of the fact of execution;*

"The Registering Officer shall register the document as directed in Section 68.

"The Registering Officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one, whether summoned or not under Section 37, present in his Office."

MR. TAYLOR said that the real alteration in the Section was the addition of the words in italics. The object of the addition was to meet the case of the representative or agent wishing to conceal, or dishonestly denying, the execution of the document. It gave power to the Registering Officer to satisfy himself that the document had been really executed.

The Hon'ble the PRESIDENT said that he fully agreed to the proposed amendment, and observed that it also met the case, which might well occur, of a representative or general agent being really unable to give any information respecting the execution.

The Motion was put and agreed to.

The Hon'ble MR. TAYLOR then moved that the following Sections be substituted for Sections 37 and 38:—

"If any person presenting any document for registration shall desire the attendance of any person whose presence or testimony is necessary for the registration of such document, the Registering Officer may, in his discretion,

call upon the Revenue Officer in whose jurisdiction the person whose attendance is so desired may be, to issue and serve a summons requiring him to attend at the Registration Office, either in person or by duly authorized agent, as in the summons may be mentioned and at a time named in such summons."

"The Revenue Officer, upon receipt of the peon's fee payable in such cases, shall issue the summons accordingly, and cause the same to be served upon the person whose attendance is so required."

He said that the only Sections in the Bill which provided for the issue of summons by the Registering Officer, gave no power to enforce the service of that summons. Practically, MR. TAYLOR understood from the Registrar General of Bengal, there would be no difficulty in Bengal, because the Registering Officer was the Revenue Officer, and would serve his summonses through the Revenue peons. But as this might not always be possible, it was necessary to introduce a provision to enable the Registering Officer to call upon the Revenue Officer to enforce service of summons.

The Motion was put and agreed to.

The Hon'ble MR. TAYLOR said that the next amendment proposed an addition to the penal clauses of the Bill. It provided a penalty for false personation in any proceeding before a Registering Officer. He moved that the following new Section be introduced after Section 92 of the Bill:—

"Whoever falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding under this Act, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both."

His Honour the LIEUTENANT-GOVERNOR asked whether the case had not been provided for already by the Indian Penal Code.

The Hon'ble MR. TAYLOR supposed that His Honour referred to Section 205; but that only provided for false personation in a Civil suit or Criminal prosecution.

The Motion was put and agreed to.

The Hon'ble MR. TAYLOR said that, in consequence of the foregoing amendment, he would move that the numbers of the subsequent Sections be altered.

The Motion was put and agreed to.

The Hon'ble MR. TAYLOR then moved that the following words be added to Section 95 of the Bill:—"and in Section 228 of the Indian Penal Code the words 'judicial proceeding' shall be taken to include any proceeding under this Act." The addition was necessary because the proceedings of a Registering Officer were not strictly judicial proceedings.

The Motion was put and agreed to.

The Hon'ble MR TAYLOR lastly moved that the Bill as amended in Committee, with the amendments now approved, be passed.

The Motion was put and agreed to.

RE-MARRIAGE OF NATIVE CONVERTS BILL.

The Hon'ble the PRESIDENT moved that the Report of the Select Committee on the Bill to legalize, under certain circumstances, the Re-marriage of Native Converts to Christianity be taken into consideration. He said:—

"In submitting this important Bill to the Council, I shall perhaps do well to depart a little from the course usually pursued when the motion is that the Report of the Select Committee be taken into consideration. That course I understand to be, to assume that the principle of the Bill was affirmed when it was referred to the Committee, and to confine oneself to explaining and justifying the Committee's recommendations. But I can add nothing to the reasons assigned by the Select Committee for its amendments, and in deed I do not suppose that anybody would object to amendments who does not object also to the principle of the Bill. In truth I cannot conceal from myself that it is the principle and policy of the measure which have been in question throughout, and that nobody quarrels with the details who does not question the lawfulness or the expediency, or both the lawfulness and the expediency, of any legislation on this subject.

"I do not now propose to justify directly the principle of this measure. I have said enough about that already in for mer stages of the discussion, and indeed I have little more to say. But I propose to lay before the Council the history of the measure; to show what were the evils of which the measure is remedial; to point out what was the political and legal situation resulting from those evils; and to demonstrate that out of that situation there was but one way of escape. I hope to prove that it was simply impossible not to legislate on the re-marriage of Native converts repudiated by their heathen wives, and that, the necessity having arisen, only one mode of legislation was practicable and permissible. Of course I do not mean to say that I am not warmly and heartily in favour

of this Bill. But it is due to myself and, what is much more important, his Excellency the Viceroy—I say it all the more heartily in his absence—to establish that, whoever was at the head of the Government of India, and whoever was in charge of its legislative business, some measure of this kind must have been submitted to the Council, and that this measure could not widely have differed from the Bill now under consideration, or at least (and this I am entitled to say) could not have differed from it by any difference which has been pointed out to us by the numerous persons who have engaged in the discussion upon it

"It is first of all necessary for me to explain—so far as explanation is possible—what was the state of the law among Christians,—the law governing the celebration and formalities of marriage—before the legislation of 1864; before the two Marriage Acts of 1864 and 1865, one repealing and re-enacting the other, which I may call for convenience Mr. Anderson's Acts.

"If there are any Members of Council present who recollect the discussions on Mr. Anderson's first Bill, they will agree with me that the uncertainty and confusion which the matrimonial law exhibited can only be described by one epithet; it was chaotic. The doubts affecting it covered the whole ground between a doubt whether the marriage law in India was not stricter than that of England, and a doubt whether it was not laxer than that of Scotland. This condition of things had long existed, and having it in view, Parliament had provided a partial remedy by passing in 1851, the Statute 14 & 15 Vic., cap. 40, which was carried into full effect by the Indian Act, No. V of 1852. The Statute provided a mode in which marriages might be celebrated, and all marriages solemnized under its provisions were to be absolutely valid. It contained, however, a proviso to this effect: 'nothing herein contained shall invalidate or affect any marriages which, under the law for the time being in force in India, might have been there solemnized in case this Act had not passed.' So that the Statute did nothing to resolve the question,—which affected many Europeans and nearly all Native Christians,—what was the proper legal view of marriages which were celebrated independently of its provisions? A course of legal decisions had rendered this question one of extreme gravity. In a celebrated case, well known to lawyers, which was thoroughly analysed by Mr. Anderson in the exhaustive speech which he delivered at the final reading of his Bill—The Queen v. Millis—the majority of the English Judges advised the House of Lords that under the English Common law, *i.e.*, the law as unaffected by Statutes, the presence of a person in Holy Orders was essential to the valid solemnization of a marriage. There was, however, a dissenting minority of Judges, and it included names

of such eminence and authority that the question was regarded by lawyers as far from finally settled. And shortly afterwards the Supreme Court of Bombay, and Dr. Lushington in the English Ecclesiastical Court, decided that whatever were the state of the Common law in England, it could not be held to extend to colonies and dependencies like Australia and India, not even to the Presidency Towns which are subject to so much of English law. Of course the reasoning of these Courts applied with tenfold force to the marriages of Native Christians in the Mofussil, who owe no inherited or local allegiance to the English Common law. On the whole, the better opinion seemed to be—although the whole subject was beset by doubt—that Native Christians might lawfully marry by a contract, to use the technical expression, *per verba de præsenti tempore*, *i.e.*, by any words or forms showing a present intention to marry, and whether the marriage was legal or not, the majority of them did, I believe, so marry.

" Up to this point I have been speaking of the marriages of Native Christians under ordinary circumstances—not of Native Converts wishing to marry under the circumstances contemplated by the Bill. What, then, was the position previous to the Indian legislation of 1864 in regard to marriage, of a convert deserted or repudiated by his unconverted wife? Sir B. Peacock held that he could not be married in the presence of a Marriage Registrar under the Act of Parliament, and considering the purely English point of view from which the Act is conceived and drawn, I think he was right—at all events I bow to his opinion. But the doctrine is of no importance, because there was no necessity for marrying under the Act, and in fact the great majority of converts were simply married by Missionaries according to the simple forms which they considered suitable to the solemnization.

" It is right I should add that, till five or six years since, it is possible that a Native Christian who had re-married during the life of the heathen wife might have been punished for bigamy in the English sense, if he ventured within the jurisdiction of one of the Supreme Courts. This is a consequence of the wide language of a Statute of George IV, which, however, was never intended to apply to such a case, but was meant to put down the scandalous practices of a very different class of people. The Act indeed is a good illustration of a peculiar grievance of the Native Christians. The draftsmen of the English Parliament, in order to escape the long circumlocutory phraseology necessary for the description of all classes of Europeans in India—East Indians, Colonists and so forth—fell into the habit of using the term 'Christian subjects of Her Majesty,' and thus laws have more than once been made applicable to Native Christians quite foreign to their circum-

stances and position. There is an instance in an Act of Parliament passed this very last Session. But, however that may be, the statement I have made about the Act is of no practical importance, because an enormous majority of Native Christians never came near Presidency Towns, and because the Statute has been repealed by the Penal Code.

"Here is Section 494 of the Penal Code—'Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.'

"The Code, therefore, it will be seen, makes every thing turn on the civil invalidity of the second marriage, on its being civilly void because of the first. At the present moment, the Acts of 1864 and 1865 do make the second marriage civilly void, but how did the law stand before 1864? On what ground could it be contended that the marriage of the convert, leaving his heathen wife, was void? Putting aside for a moment those difficult questions turning on the effect of Native matrimonial law in operating a divorce through conversion, it could only be on one ground, that there was something in Christianity which forbade a Christian to have two wives at once. Now I know there are many here who will only consent to derive their law of Christian life direct from the Bible, but, so far as law is concerned—though I may surprise some by the statement—there is no Codex, no body of express rules setting forth discipline, except the Canon law, which is accepted by the Courts of even Protestant countries as authoritative on the point where it has not been expressly dissented from. Now, the Canon law, while laying down the general rule, does permit a convert to re-marry during his first wife's life where she deserts him on religious grounds. In fact, the definition of the Penal Code before cited let in the delicate theological point to which I will advert presently. Indeed I must go further. I feel the scandalousness of the position—but I am not sure that a Native convert might not lawfully have practised polygamy. It may plausibly be contended that a Native of India, converted to Christianity from a religion which permitted polygamy, did not by the fact of conversion so change his legal status as to render invalid, after it, any marriage he might have contracted before. To apply the rule of monogamy to him is obviously impossible, for he might have had five or six wives before conversion, who would not have been less his wives after conversion.

"Of course, I know that some of these propositions are disputable—indeed it is part of my case that the whole subject was immersed in doubt—but I

have stated my opinion, which I believe to be the better opinion, and it is some presumption in its favour that it corresponds with actual practice For it is certain that these marriages were entered into freely by Native Christians, and nobody ever heard that a Native Christian was ever punished for marrying during the life-time of the unconverted wife, or that any Missionary was punished for abetting an illegality through marrying him.

"This then was the state of the law. Every part of it was enveloped in doubt; doubt which affected all Christians, but Native Christians more than all. It was doubtful whether they were not bound to marry in the presence of a Marriage Registrar, which, considering their situation and circumstances, amounted to a prohibition of marriage; but again it was doubtful whether they could not marry with just as much or as little ceremony as was necessary to supply proof of intention. It was doubtful whether a Native Christian might not be punished for bigamy in the Presidency Towns for marrying when his spiritual guide told him such marriage was lawful; but again it was doubtful whether he might not with impunity continue to practise polygamy.

"I hold myself dispensed from showing cause why the Legislature should have interfered in such a state of things. What worse could its bitterest critics say of it, than that it declined to remedy evils so intolerable? Doubts concerning the validity of marriage are not simply serious on grounds of feeling, though every body who has observed how much the moral and religious views on this subject are affected by the legal view, will consider them serious even on that ground. But they are formidable for the most solid reasons. Such doubts are doubts concerning the legitimacy of children; they are doubts concerning the guardianship of children; they are doubts concerning the descent and inheritance of property. And they are especially painful because, if the questions involved in them are wrongly solved, the error or negligence of the parents is visited on unborn generations. The danger meanwhile was greater in regard to the Native Christians than any other class, because they were practically debarred from the only complete security against mistake, marriage under the Marriage Act then in force.

"I cannot see what the Indian Legislature was good for, if it felt itself unequal to placing the law of Christian marriage on a satisfactory footing. However that may be, nobody now a Member of the Government or of this Council is responsible for the beginnings of the undertaking. As soon as the three great Codes—the Penal Code, Civil Procedure Code, and Criminal Procedure Code—were completed, it was felt that the law of marriage was the next great body of rules which it was urgently necessary to consolidate and put in order, and Mr.

Ritchie, my predecessor in office, was for months before his death engaged in drawing a Marriage Bill, much of which is now embodied in the Acts of 1864 and 1865. Mr Ritchie's papers were left imperfect at his death, and hence I cannot be sure that I have gathered his intention from the indications they furnish, but I am under the impression that he intended to bring all Native Christians under the same law as Europeans, in respect of the formalities of marriage. But when he died, and the papers were transferred to Mr. Harington, he saw the practical impossibility of suiting to the circumstances of Natives any system, however liberal and elastic, which fitted Europeans, and Mr. Harington accordingly added the provisions which now appear as Part IV of the Act in force, under which licenses to solemnize marriages are to be freely issued to respectable persons, whether laymen or clergymen, by the Local Government. The celebrant is to report the marriages he has solemnized, but is not bound to use any special form. He is, however, obliged to see that certain conditions are satisfied by the persons he marries, and here occurs the provision which has rendered this Bill necessary. The person wishing to marry is not to have a wife or husband already alive. Now, as Mr. Harington's opinions are known, I presume he intended a very simple settlement of the question, and meant to prohibit converts from re-marrying pending the life-time of the unconverted wife. But when the measure passed into Mr. Anderson's hands and went to Committee, I need not say that the wisdom and justice of this prohibition were sharply denied; probably the majority of the Committee were adverse to the prohibition. But it was seen that to settle the question at once would be to delay indefinitely an urgent reform. The situation of the Native converts was unsatisfactory, but the general state of the law of marriage was still more unsatisfactory. Accordingly the course followed—not only justifiable, but in my opinion the only one which could have been taken—was to declare in the Bill the general rule, that a Christian should have but one wife; but to leave the special case of a convert repudiated to be dealt with separately. When the Bill came into Council, the Lieutenant-Governor of Bengal was not satisfied with a mere understanding, but tried to introduce words into the Bill intending to pledge the Government to take up the question. I opposed, on the technical ground that it was not constitutional for the Council to force the Executive Government to any particular course, and the Lieutenant-Governor withdrew his motion. But it appeared to me, and I state it now, that every Member of the Government and of the Council engaged by implication that this exceptional case should be fully gone into, though of course no pledge could be given as to the special mode of settlement. No sooner did we get to Simla than the Lieutenant-Governor pressed for the fulfilment of the engagement. An answer

conveying a pledge to legislate was given on August 27th, 1864, and on the very first day of the sittings of 1864-65 I redeemed the pledge by moving for leave to introduce this Bill.

"If I have had the good fortune to make myself intelligible to the Council, it will result from my statement that the discussion on which we are engaged to-day is not merely the supplement to, but actually part of, the discussion which took place when the Marriage Act was under debate. No objector to the Bill is entitled to take advantage of the fact that the re-marriage of converts repudiated by heathen wives has for two years been illegal in India. That is a mere accident arising from the impossibility in India of holding continuous sittings of the Legislature. We must recur to the situation in which we found ourselves in the spring of 1864. We must consider ourselves as having laid down the general rule (to which who will object?) that a Christian can have but one wife, and we must regard ourselves as proceeding to consider the special case of the repudiated convert. This is the true position of the question to-day, and it is important to bear it clearly in mind, for the following reasons. It alters the burden of proof. Many of the excellent persons who have addressed us in petitions are under the impression (perhaps not an unnatural one) that it is for the Government, or for me, to justify the principle of the Bill. But strictly speaking this is an incorrect view. The liberty of re-marriage must be considered as enjoyed by the Native Christians, certainly in practice, and probably under sanction of law, and it is for those who would sweep it away to prove their case, and it is for those who would abridge it to justify by argument the limitations which they would place upon it.

"If I had any reason to think that this measure would be opposed, I might stop there, and leave to opponents what I am sure would be the extraordinarily difficult task of establishing a case against the Bill. But as I do not anticipate any opposition, I will as briefly as I can—and, so to speak, under protest—advert to the objections which might be urged against me, as I collect them from the papers which have been circulated through the Council. The first of these objections, and the most difficult to deal with, is the objection that the divorce and re-marriage of the convert are not permissible under the laws of Christianity. I call it the most difficult to deal with of all, not because it is unanswerable, but because—even if I were competent to answer it—I could not make out a case conclusive to the minds of those who use it, unless I travelled into topics which cannot be handled in a Council composed as this is. Although, however, I cannot hope to convince those who doubt the lawfulness of the measure, I venture to think I can point to

a weight of authority in favour of its principle, which must at all events show them that the question must be considered as settled, so far as any secular Legislature is concerned. The exact point I hope to prove is that, as a matter of fact, and as a matter of history, no Church or religious community in all Christendom has ever given a decision or an opinion on the question involved, which decision or opinion has not been in harmony with the Bill.

"The first religious community which I shall mention as having ruled the point in favour of the view taken by the Bill is the Roman Catholic Church, and I mention it first because its doctrine is based on the Canon Law,—which is all-important in this discussion—and which declares divorce lawful under the circumstances, and even settles a procedure to be followed. And here I must express my surprise at the language held by some of the critics of the Bill about the Canon Law. They seem almost to suppose that its authority being in favour of the Bill ought to militate against it, rather than otherwise, in the eyes of Protestants. Now I always thought it almost a commonplace in ecclesiastical law that, where the Canon Law has not been expressly dissented from by the Protestant Churches, its authority on points of discipline like this is held by them to be not only great, but paramount. At present, however, I will merely cite it as proving that the Roman Catholic Church considers the divorce of a convert repudiated by his heathen wife to be lawful."

Mr Maine then proceeded to quote authorities showing the concurrence of other religious bodies in this view. He said that, although the information which had reached him was imperfect, he had no doubt that the Greek Church held the same doctrine on the point. After observing that the dogmatic statements of Luther and Calvin on points like this were held binding by the Continental Lutheran and Calvinistic Churches, Mr. Maine quoted opinions to the same effect from Luther and Calvin. He also cited Melancthon, as being the draftsman of the Confession of Augsburg. For the opinions of the Scottish Presbyterian Church, the English Presbyterians, and the various dissenting religious bodies descended from them, he appealed to the Westminster Confession, observing that the text on which the controversy turned was quoted in the margin at the passage which bore on the point in the earliest editions. The only religious community which had not pronounced dogmatically on the point was the Anglican Church, but it was one of the characteristics of the Anglican Church only to pronounce on emergent questions. Its doctrine on other points was to be collected from its learned authorities, and which way the weight of learned authority inclined might be seen by the opinions of English divines quoted in the Pastoral of the Bishop of Calcutta, whose own adoption of the view taken by the Bill

might indeed be regarded as establishing what was the voice of learning. The simple fact was, there was no authority whatever the other way, good, bad or indifferent. MR. MAINE did not complain of the opposition to the Bill offered by a few Missionaries and a considerable number of Bengal Chaplains, but it was quite idle to suppose that every man could form a satisfactory opinion of himself and for himself on a point of discipline which for century after century had been of interest to all Christian Churches alike, and upon which it had never occurred to them to differ. At all events, all Christendom being on one side, and these gentlemen on the other, a mere legislator must be guided by the voice of Christendom.

MR. MAINE proceeded—"It is objected to the Bill—and this is the second objection which I will notice—that it is only required by a small number of converts. Here I will say that, if I made any concession to the opponents of the measure, it would be that the general language of some of its friends as to the number of cases in which divorce is actually required has been somewhat too strong. But then the number, though not extraordinarily great, is still very considerable, and it is sure to increase, for both the causes which bring the husband over to Christianity, and the influences which keep back the wife, are steadily growing in strength. And indeed, even were the area of the grievance smaller than it is, it is always most difficult to apply statistics to a grievance which, though felt by a few, is probably felt by those few as quite intolerable. But the truth is, I claim, as cases making in favour of the Bill, all the instances in which, under the present system, the wife comes over of herself—voluntarily, as it is called. It is a very inadequate view of this Bill if it be only regarded as a Bill for dissolving the marriages of Native Christians. It is in its main features a Bill for the restitution of conjugal society, and the great merit I claim for it is, that it substitutes a merciful and regular, for a cruel and irregular, procedure. The argument of the few Missionaries who are opposed to it is that, in the majority of cases, the wife joins her husband voluntarily. The fact appears to be so at present, though singularly enough it appears to be unknown to the Native petitioners against the Bill, who evidently assume that the new law will for the first time give his wife to the Christian husband. But though she comes over, in what sense can she be said to come over voluntarily? The truth is, there is a procedure by which she is brought over, but it is a procedure involving the slight defect of moral torture or worse. It would be moral torture if it were only a conflict between affection for her husband and deference to the persuasions and misrepresentations of her kindred. But it is too often torture in another sense. What brings her over, is the intolerable life of the Hindú widow; what brings her over, is too often a course of life which has unfitted her for the society of her husband, as much

as it has done for the society of her relatives who have at last driven her out. And if the procedure employed is sometimes aided by the expedients resorted to by her husband to communicate with her, I can only say that these expedients, as described to me, seem to me open to to the gravest misconstruction. But for this procedure, cruel, capricious, and even scandalous as it is, the Bill will substitute a procedure, simple, regular and effectual. Twice within two years from the desertion, the wife will be judicially asked whether she will join her husband; twice she will be solicited by her husband to come over, but never *sola cum solo*; that was never intended, and those who have a contrary impression cannot have read the Bill. That is all it comes to; and yet so convinced am I that the cause which keeps back the wife in the majority of cases is, not horror of the husband's person, but misrepresentation by others of his new mode of life, that I am sure this simple procedure, these few opportunities of explanation, will be enough to overcome her reluctance. No doubt there will be a small residuum of cases in which the husband will not succeed, but in these cases the absolute impossibility of restoring conjugal society may be taken for granted, and to these, and to these only, the provisions for divorce will apply.

"I now come to what in the language of this country is called the political objection. Agreeing that it is just and right to give redress, does the situation of the English, of the British Government in India, admit of its being given? Now, there are several gentlemen at this table whose experience of the country enables them to answer that question with far more authority than I can, but there are many things which lead me to think it would be very surprising if the question had to be answered in the negative. In the first place, the Bill has been framed upon, and moulded to, the opinions and suggestions of the Maháráj́ás of Vizianagram and Burdwan, and it would be strange if the British Government were compelled to greater tenderness for the obligations of rank and caste than our Hon'ble Colleagues. In the next place—and the Council will see that this consideration is likely to have some weight with me—a Native lady exposed to the full brunt of this procedure will undergo no sort of indignity which, if indignity it be, she would not have to suffer ten times over, if she were plaintiff or defendant in a suit for half a bígha of land, or indeed if she happened to know anything about it, and her testimony were required. I hear it said on good authority that the agitation against this Bill—not very fervent or formidable—was commenced by some Native gentlemen attached to the Bar of the Agra Sudder Court. Is it possible they can be unaware that commissions for the private examination of ladies of the highest rank issue every day in Bengal and the North-West, and that the Commissioner is often—is always, if it can be managed—an English

gentleman of my own profession, who is quite as much an outcast as the unfortunate husband. All the epithets which the tolerant habits of this Government permit our petitioners to repeat of the Christians with such complacency, that they are outcast, degraded, and utterly unclean, apply in all their force to the Barrister-Commissioner, and the native lady—though the form of a curtain may be between them—is exposed to the calamity, so much dwelt upon in the petitions, of breathing the same air with him ; indeed, she is exposed to a process much more unpleasant than the solicitations of the unfortunate husband, a severe cross-examination. The Council must really not confound objections to the procedure of the Bill, with objections of another kind—objections to a man's becoming a Christian. One of our petitioners (I do not agree with his opinions, but I will do him the justice of saying that he is a very honest man) has proposed that the offence of conversion to Christianity should be punished by seven years' rigorous imprisonment. I am afraid that this opinion pervades several papers which the Council has before it, and in which it is not avowed.

" But whatever be the weight to be attached to the Native objections to the measure, I must make one observation on them—I entirely deny the right of the same person to make the Christian and the non-Christian objection at the same time. It is not permitted to argue that the Bill is not required because the majority of wives come over, and to argue in the same breath that their coming over is a grievous wrong to the Hindús. And it illustrates the levity with which some of the arguments against the Bill have been taken up, that it has been described as tending to make the heathen suppose that Christians think lightly of the marriage bond. Why, the very objection of the heathen is, that the measure does not treat the marriage bond lightly enough. They have not the smallest reluctance to let the convert marry a new wife, or twenty new wives. What they quarrel with is the careful consideration shown to the first marriage and the first wife. It would be easy to silence, if not to satisfy, all the Native petitioners against the Bill,—those excepted who simply object to Christianity—by a simple excision of the Sections which provide a procedure to be followed before divorce. But I cannot give up that procedure. I cannot give it up, in the first place, in justice to the wife. I do not think the situation of a Hindu widow so happy, or that of a Christian wife so unhappy, that I can consent to leave her to her family unless in deference to her fully ascertained free-will. The Missionaries and the converts are well informed as to the causes which generally keep the wife apart from her husband. It is no fanciful opinion about his outcast condition ; it is misapprehension about his new mode of life—some miserable fable about meat, drink or raiment, by which she has been deluded—which deters her. I cannot agree to leave her to her widowhood until at least an opportunity has been given of explain-

ing these delusions away. Again, I cannot abandon the procedure in justice to the husband, for, if in law she is still his wife (which is the case supposed), I do not choose to assume that his sole object in suing her is to obtain facilities for marrying somebody else. Lastly, I am not ashamed to say that I will not surrender the procedure, because, while it is equitable in itself, it is in harmony with the theory of divorce in which so many Christian Churches have concurred, and by which the Native converts and their advisers are presumably guided. That theory I understand to be, that while divorce on the ground of persistent heathenism is lawful, it is not lawful in cases where the civil law maintains the validity of the marriage, unless some serious attempt is made to recover the wife's society. It is the more reasonable to make some concessions to the doctrines held by the converts, because I am convinced that, in regard to this particular matter, they obtain less than fair treatment simply because they are Christians. It is not only that we forget that they are a Native race, with many of the characteristics of all Native races, but we actually show them less consideration than other Native races. I am completely convinced that if conversions had been going on in some parts of India from Hindúism to Mahomedanism, and if the convert to Mahomedanism had entertained the same feeling as the Christian convert about his first wife (which one knows he would not), and if the disturbances which would be the probable consequence had compelled us to legislate—I feel sure that a Bill applying this carefully guarded procedure would have been praised by all as eminently prudent, moderate and equitable. But because the converts are Christians, every point is taken against them. For this reason I have been compelled to prove, I fear at tedious length, that they are entitled by their own religious laws to demand relief. Contingencies on which not a thought would have been bestowed if another Native race had been in question have to be carefully weighed and taken into account; the very molehills of Hindú prejudice are exaggerated into mountains, and difficulties which in every-day Indian life crumble away at a touch are assumed to be of stupendous importance. I know, of course, that we do this because the converts are of our own faith, and because we are tender of our character for impartiality. But I do not know that we are entitled to be unjust even for the sake of seeming to be impartial. Surely the duty of the British Government to the Christian converts is too plain for mistake. We will not force any man to be a Christian; we will not even tempt any man to be a Christian; but, if he chooses to become a Christian, it would be shameful if we did not protect him and his in those rights of conscience which we have been the first to introduce into the country, and, if we did not apply to him and his those principles of equal dealing between man and man, of which we are in India the sole depositories."

The Hon'ble MR. MUIR said that the luminous and exhaustive, and (he trusted he might be permitted to say) admirable, defence of the Bill, which the Hon'ble the President had just delivered, rendered it superfluous for him to speak at any length in its favour. This was also the less necessary, as on a former occasion he had entered at some length into a statement of his views on the question, especially from the Christian side of the argument. He would therefore make his observations as brief as possible.

He considered the Bill to be necessary because we had made that penal which ought never to have been made penal. We must now retrace our steps and remove the penalty.

At the time Mr. Anderson's Marriage Bill was circulated for suggestions, it was generally held by those who supported the Bill, that a supplementary measure of this kind would be absolutely necessary in justice to the Native converts. He held in his hand the replies on the subject, submitted from all quarters to the Government of the North-Western Provinces, ni the beginning of 1863. It was remarkable with what unanimity this view had been spontaneously expressed by the great majority of persons from every class, official and clerical, that if the Bill became law, a measure of the nature now before the Council would be needed for the relief of converts. Among these he found his own opinion which had been referred to by the President, and from which he would quote one or two sentences as shewing that he had been consistently in favour of the measure before he had the honour of a seat in this Council. He had written thus:—

"We must not admit that the adoption of the Christian religion sweeps away existing obligations, but when these obligations are repudiated by the other party, a limit should be put to the wrong inflicted upon the husband or wife, who would otherwise be deprived of all prospect of matrimony, if held bound, till death, by the previous marriage. Liberty of re-marriage should be given after notice served on the opposite party, and after the convert had endeavoured in vain for a considerable period to abate the desertion and restore the state of cohabitation. If we impose the Christian rule of marriage, its inexorable law of monogamy and penal infliction for bigamy, we ought to see that all reasonable scope is given for marriages in accordance with reason and morality, and not against the law. There is no ground in the existing law for holding a Hindú or Mahomedan convert bound under all possible circumstances except adultery by a non-Christian marriage; and if he can show that for years he has endeavoured without success to get his wife to follow him, there is nothing in the principles of abstract law or ethics to prevent the marriage being pronounced invalid,—much to be said in favour of such a course..... If peculiar opinions, or a higher morality, should lead any school of theologians to inculcate a different course, or impose a different rule, on their communities, they can do so, but this should not avail to involve the great mass, who do not hold themselves so bound, in certain unnecessary social disabilities."

The matter seemed to him (MR. MUIR) to lie in a nutshell. The argument for the Bill, from the Christian point of view, might be comprised in a dozen words;— Spiritual offences are not to be visited by secular pains and disabilities. This was taking the lowest ground, and arguing on the premises of the opponents themselves. For the offence, if one at all, was evidently a spiritual and ecclesiastical offence, and not a secular offence. It could not be called an offence against the civil or municipal law of England, for the case was never contemplated by that law. It could not be held an offence against society, calling for the enactment of new and special sanctions as a safeguard and security to the interests of the social system; else why should we find so large a majority of the community itself, both lay and clerical, in favour of the measure? There was no principle in ethics, in our abstract ideas of right and wrong, opposed to the re-marriage of a convert under the circumstances supposed. He (MR. MUIR) was then entitled to say that the offence was not a secular offence, punishable as such by the pains and disabilities of the secular law.

If it were an offence, it must be a strictly spiritual or ecclesiastical offence. It could be an offence only because supposed to be a transgression of a doctrine,— or rather of an ecclesiastical dogma, held by a section of the Christian Church,— that under whatever dispensation or religion the parties might live, the first contract of marriage could be the only true one; that it was absolutely indissoluble (excepting perhaps for adultery), and that it excluded and nullified every other; so that, during life, under no possible circumstances could another than the first contract of marriage be valid, or another than the first husband and wife be recognized as such; any other husband or wife, under whatever circumstances espoused, would not be a true husband or wife, but something else, it did not clearly appear what.

On these grounds, he (MR. MUIR) could understand a clerical opponent of the Bill, who held such views, visiting an offender with ecclesiastical penalties. He might refuse to celebrate the marriage; he might place the offender on the stool of repentance; he might proceed to excommunication, and debar him from the society of a body whose dogma he had contravened: in short he might inflict any ecclesiastical penalty which the law and the opinions of the day would admit. This he (MR. MUIR) could understand; but he confessed he could not understand the opponents of the Bill when they insisted on their dogma being enforced, as it would be if the present law were maintained, by criminal penalties and secular disabilities. Much less could he understand their refusal to relax its penalties in reference to whole bodies of Christians, who not only reject the dogma, but held that re-marriage was under

the circumstances expressly permitted by the Divine law. It seemed to him incredible that, in the 19th century, persons could be found calling in the criminal law to maintain and enforce a purely religious doctrine, and one held by but a minority in the Church.

If, then, the penalties on re-marriage were to be removed, as he (MR. MUIR) held they must, it followed that the re-marriage of deserted and repudiated converts must be legalized and validated, and the disabilities at present attending it removed: and that was the simple object of the present Bill.

So much for the Christian argument against the Bill, if it was worthy of that name. He now proceeded to consider the arguments against it from the Hindu and Mahomedan point of view. Here the objections were of an entirely opposite character. We Christians attached, they said, too great weight to the previous marriage which had been disannulled by the conversion to Christianity of one of the parties: and we recognized rights in the convert, in respect of the former husband or wife, which no longer existed.

And here, in passing, he would notice that this was a sufficient answer to those who, as the Hon'ble the President had observed, alleged that by this Bill the impression would be created that we held the marriage-bond lightly. He (MR. MUIR) had met good men who stumbled at that idea, and were against the Bill on this ground alone. Why, the truth was that, on the contrary, as he had stated last year, the Bill might be regarded, not so much as a law of divorce, as one enabling and requiring the convert to maintain the previous marriage: it was not until he had taken every means in his power to this end, and had failed, that liberty to remarry was given. And if the Bill had any defect in the eyes of the Native community, it was just this.

The fact was, that each of the parties to the previous marriage must be judged and treated according to their respective laws and religious systems. On the side of the Christian convert, an obligation undoubtedly lay upon him to maintain the existing marriage, if the other party were content. There was the apostolical injunction to the husband, that if his wife be pleased to dwell with him, let him not put her away; and to the wife, that if her husband be pleased to dwell with her, let her not depart from him. It was right and proper therefore to require the convert to do what in him lay to maintain the marriage. In short, the Christian system taught that there was a continuity of the marriage after conversion, that it remained intact,—unless broken and annulled by the repudiation and desertion of the non-Christian party. And on this ground he did not doubt that where (as in the case of Mahomedans) the law might not lay down a course of procedure to

establish the repudiation, even there the ministers of religion would call upon the convert to shew that no means had been left by him unattempted for the maintenance of the previous marriage, and only then, and after the lapse of a sufficient interval, would they proceed to sanction re-marriage.

But the case was entirely different with the non-Christian and dissenting parties. We must look to their rights and legal position under their own system, and we must be careful not to demand or enforce anything inconsistent with those rights. If, according to their law and creed, the marriage had become void by the conversion of one of the parties to it, we must not by any Act of the Legislature interfere with their liberty of action: we must not, because of the different light in which Christianity views the marriage-bond, enforce any procedure justifiable only on the supposition that the bond was still unbroken. And it was on this ground that the Mahomedans had been exempted from the operation of the Bill. The Mahomedan law distinctly and expressly provided for the case, and declared that the marriage was dissolved by the falling away of one of the parties from Islám As the law now stood, it had been shown that the convert from that religion could re-marry without incurring any penalty or disability, and no farther provision was necessary for his relief.

But it was not so clear that the Hindú law provided for the case. It was not certain that the law pronounced an immediate, complete and irrevocable separation between man and wife if one of them joined another faith. Some vestige of right might therefore still remain in the husband over the wife; and on the side of the wife towards her husband, in respect of property, maintenance, the guardianship of children, etc. It was the jealous care of the Legislature not to imperil any such rights by a hasty and precipitate declaration of annulment. And on this ground it was justified in interposing a sufficient interval of time, and providing for certain appearances and interviews by which the voluntary and deliberate renunciation of the marriage might be clearly evidenced. Here, then, the requirements of both systems met; the procedure fulfilled the Christian requirements of the case, by attesting that the convert did all in his power to maintain the marriage; and the Hindú requirements, by proving that no rights were sacrificed through precipitate dissolution, and that the repudiation was deliberate and voluntary. By the amendments to be moved by the Hon'ble the President, it was provided that any respondent who held that by Hindú law the contract was *ipso facto* cancelled by conversion would be able to plead that defence; and if it were proved, the party pleading it would be at once relieved from all farther proceedings. A body of precedents might be expected on this point; and if the Hindú law were really as had been repre-

sented by some of the objectors to the Bill, the simple presentation of that plea would ever after bar farther proceedings, and suffice for the decree of dissolution.

Thus the measures provided by the Bill were just and equitable, and they met the requirements of the case with every consideration and respect for the position and rights of the parties concerned. If the farther amendments which he (MR. MUIR) would have the honour to submit were carried, the procedure would be still farther ameliorated, and the objects of justice secured with as much tenderness and as little inconvenience and annoyance as were compatible with the ends in view.

On one point he (MR. MUIR) felt it his duty to state that he still differed from the Bill, and that was on the subject of infant marriages or betrothals. He still held the opinion which he advanced last year, that such marriages, unless followed by cohabitation, ought not to be enforced at law by any penal provisions. They should be treated as ordinary contracts, the breach of which might form the ground of civil action, but not of criminal prosecution. He admitted, however, that the procedure in this class of cases had been greatly improved in Committee, since the refusal of the non-Christian party on the first interrogation would form the ground of immediate decree. If the betrothal was to be held binding, the procedure could not be made less objectionable. And as he (MR. MUIR) found that the opinion of the Council was against him on the principle involved, he would not press his opinion farther.

He also wished to repeat what he had said on a former occasion, that there was urgent necessity for a law of divorce on account of adultery. Such a law was indispensable for maintaining the purity of domestic relations among the Native Christians, for at present they had practically no means of redress. He trusted that his Hon'ble friend, the President, would take the earliest possible opportunity for introducing such a law.

He trusted that the Hon'ble the President would permit him, before concluding, to say that he (Mr. Maine) had imposed upon the Native Christian community a debt of gratitude by bringing successfully to its present stage this Bill, which he hoped would in a few minutes become the law of the land. When he (Mr. Maine) retired from this country, and looked back upon the measures of eminent benefit which he had carried through the Council, he would no doubt find many that affected wider interests, and classes more numerous and influential; but he would find none based upon sounder principles of equity and justice than the present, none affecting a class of the community which by their worth and their loyalty had stronger claims upon the Legislature.

The Hon'ble the MAHÁRÁJÁ OF VIZIANAGRAM said that, after giving his attention to the subject of this proposed law, and after going through all that had been said both in favour of and against it, he was still of his original opinion that there was no doubt whatever of the necessity of such a law.

The Bill seemed to have caused much needless apprehension. Taking the common run of the Hindús, they all knew that their marriages were celebrated when the parties were *impuberes;* and in all such cases Section 21 of the Bill determined the question as soon as that simple fact had been proved. It was then to cases in which marriages took place after the parties had attained puberty that the proposed law applied. Even in regard to these, the amendments which the Hon'ble the President intended to introduce into the Bill provided that, if it could be proved that according to Hindú law the first marriage was dissolved on either party having become a convert to Christianity, the question would at once determine. Apart from these considerations, which showed that the proposed law would be unobjectionable in principle and harmless in working, it might be observed that no contract could be dissolved unless all the parties to it did consent to such dissolution, or it was infringed on either side. Marriage was a grave and solemn contract entered into by man and woman in the presence of their Creator. If the rule held good in common contracts, could there be any doubt of its being more binding in such grave and solemn contracts?

He had lately been turning over all the available authorities on the subject of divorce. Every European Jurist that had written upon it without reference to any particular religion, had declared himself in favour of this contract being indissoluble during the life-time of either party. Nor was it otherwise with the Hindús. Then how was a contract of this nature to be dissolved? The ancient Hindú Jurists had no idea of the Christian religion; and it was therefore impossible to suppose that the word *patita*, which occurred in their writings, meant a convert to that religion. Paráçara was the great authority for the present age, and those who were opposed to the Bill seemed to base their arguments chiefly on the *Paráçara Smriti*, in which occurred a couplet—

Nashte mrite pravrajite klîbecha patite patau

Panchasva patsu nârinâm patir anyo vidhiyate;

which translated ran thus:—

A second husband is enjoined to women in any of the five cases of hardship; namely, when the (first) husband is lost, dead, has become a religious mendicant, or impotent, or fallen (from religion and virtue).

The word *patita* here did not seem to mean a convert to a different religion, but merely one who had abandoned the paths of religion and virtue. Every Hindú Jurist seemed to have employed this word or some of its equivalents in a similar sense. What they meant by the word *patita* was entirely in relation to the Hindú religion. *Patita*, then, was not a Hindú who renounced Hindúism, but was one who, being still a Hindú *in name*, did not observe the ordinances of the Hindú religion. Could such a word be applied with any propriety to a Christian convert who believed that he had embraced a better religion and whose conduct was generally virtuous? As the first marriage of a Hindú convert to Christianity was not satisfactorily dissolved, and as neither party could marry a second time before the first marriage had been dissolved, the proposed law was justly a desideratum. Even supposing that *patita* meant a convert to Christianity, and that therefore the first marriage was thereby dissolved, it was still dissolved on the Hindú side only; for the Hindú law did not govern the Christian, and as Christian law did not sanction bigamy, and as bigamy was a crime under the Indian Penal Code, a law was required to absolve the Christian convert from these religious and legal responsibilities.

Then again it would be said, why not simply say that a Native convert's previous marriage was null and void through the fact of conversion. As he had already observed, marriage was the gravest and most solemn contract; and before pronouncing it to be dissolved, it was but right and just that all possible means should be adopted for ascertaining whether it could be really dissolved; for if there were a Hindú husband or a Hindú wife wishing to join the convert, how was this fact to be known? Again, how were we to ascertain whether the Hindú's objections to join the convert consort were spontaneous, or proceeded merely from outside pressure of near relations and others? Such considerations as these strongly induced him to support the amended Bill, and move that it be passed.

His Honour the LIEUTENANT-GOVERNOR said that, after what had fallen from the President and Mr. Muir, he need not take up the time of the Council with any lengthened statement of the grounds on which he supported the Bill. He did support it cordially, and regarded it as in a great measure the fulfilment of the objects proposed in the communication from the Missionary Conference, which he had the honour of submitting to the Government of India the year before last. So far as the theological argument in favour of the Bill was concerned, he was quite content to accept the views of the Lord Bishop as expressed in His Lordship's Pastoral, supported as they were by a weight of authority which, as the President had observed, amply justified a secular Legislature in acting upon them. He did not think that those among

the Clergy who held a different opinion had any reasonable ground for objecting to the Bill, since it was purely permissive in its character, and contained a clause exempting ministers of religion from the obligation of marrying persons whose previous marriage had been dissolved by the operation of the Bill.

No doubt the defect of the Bill, if defect it could be called, consisted in the tenderness it showed towards Hindú marriages, and, considering the circumstances of those who would chiefly be affected by the Bill, he would himself have preferred a simpler course of procedure. He was disposed, therefore, to support the amendments of which Mr. Muir had given notice, for, though he did not concur in the objections urged in the various communications which had been made to the Council,—objections which had been happily refuted by the President—he thought the procedure as contained in the Bill more intricate and cumbersome than was necessary, and hardly applicable to the poorest classes, the classes to which the great majority of converts did and must always belong.

He must express his regret that Mahomedans were excluded from the operation of the Bill. He would not question the correctness of the construction of Mahomedan law by which Mahomedan marriages were declared to be void *ipso facto* on conversion of either party; but this construction left the convert at liberty to contract a fresh marriage immediately after conversion, and though this might be unobjectionable in the case of a convert repudiated by his wife, or by his wives if he had more than one, yet there was another case which had perhaps not been fully considered. A Mahomedan might become a convert with a view to contract a fresh marriage, and might repudiate his former wife or wives though they desired to live with him. He would have nothing to do but to declare himself a convert to Christianity: all his previous marriages would at once be void: he would have no wife living: and no Marriage Registrar could refuse to marry him to another woman. This was a monstrous evil, and one he feared not unlikely to arise. So again, in regard to the Roman Catholics, it might be wise to defer to the wishes of the priesthood, but he could not help thinking that the interests of the converts had been overlooked. It was true that the re-marriage of the convert would be a valid marriage in the eye of the Church, and His Honour was not disposed to think that there would be any want of precaution in ascertaining that the repudiation of the convert by a former husband or wife was sincere. Still it was not clear that the re-marriage was a legal contract, and the status of the convert, of his former wife, of his new wife, and of the issue of the re-marriage would be doubtful and uncertain. He mentioned these circumstances, not with a view of finding fault with the Bill, of which he heartily approved, but

to indicate them as points which must soon demand the attention of the Government and of the Legislature.

There were one or two amendments of no great importance which, with the permission of the Council, he would move at the proper time, though he had omitted to give notice of them: but he regarded the Bill as a most valuable measure, and a just relief both to the converts themselves and to their unconverted partners, as well as to ministers of religion, who would now be at liberty to solemnize the marriage of converts, legally separated from unconverted husbands and wives, without the fear of penal consequences.

The Hon'ble MR. TAYLOR said that there was still less reason than any which could apply to His Honour the Lieutenant-Governor why he (MR. TAYLOR) should occupy the time of the Council by any observations on the subject now under discussion. Lest, however, it should be supposed that there were any differences of opinion on the really important provisions of the Bill, which were not reconciled in Committee, he thought it right to say that he concurred entirely in the sentiments so well expressed by the President on this interesting and important question, and that he also agreed in most that had fallen from his Hon'ble friend, Mr. Muir. He thought his Hon'ble friend had exercised a wise discretion in refraining from pressing his views with respect to infant marriages, but this was a subject which would scarcely bear discussion in this Council, and he had no wish to pursue it.

As regarded Hindú public opinion in respect of the soundness or otherwise of the Bill, though we had received petitions against it from the Hindú inhabitants of a few of the large towns in the North-West Provinces, none had reached us from other parts of India, either from the Presidencies of Madras or Bombay. He had been at some pains to ascertain the real feelings in this matter of the more enlightened Hindús of the Madras Presidency, in some parts of which there existed to this day as bigoted an adherence to the rites and tenets of Hindúism as prevailed anywhere; and he gathered from all the communications he had received, that the general feeling was one of utter indifference as to whether or not the Bill became law. One of these papers he now held in his hand—it was from a Bráhman of high caste, who obtained a thoroughly good English education in a Missionary school. He styled himself an unconverted Native, but he was well known as an able, intelligent and upright public servant of long standing. One passage in his letter, which was too long to quote entire, appeared to him to be so striking a commentary upon the known theological view of this question which had been entertained

and expressed by a section of the Calcutta clergy, that he hoped the Council would pardon him for quoting it. He said—

"It is contrary to the first elements of logic and reason to suppose that because a man chooses to embrace a religion which he finds best adapted for his future salvation, he should also give up, whether he wishes or not, that conjugal engagement ordained and sanctioned by every religion on the surface of the earth. There is no doubt that all obstacles thrown in the way of re-marriage will prove to be so many valuable tests of sincerity and safeguards against false and hypocritical conversions; but the end cannot justify the means. In the early stage of Christianity, persecutions were the causes which contributed to its progress, but persecutions were not, therefore, in themselves justifiable. There can hardly be two opinions on the justice and duty of Government to legalize the re-marriage of Native converts when repudiated by their wives on the ground of the change of religion"

There could scarcely, he thought, be stronger testimony in favour of the soundness of the principle of the Bill. The only really distasteful portion of the Bill was the procedure provided for the institution of the suit for conjugal society, and for bringing the Native wife before the Judge in a Court of law. This was described as being generally repulsive to the feelings of Hindús; but the procedure would be so simplified and so improved by the amendments about to be introduced by the President and by Mr. Muir, that he (MR. TAYLOR) thought every reasonable objection would be removed. The procedure which was now proposed, while in his opinion it would suffice to ascertain the real mind and wishes of the Native wife, was as tender and considerate as it well could be in reference to the social prejudices of Hindú society. He believed, as had been well expressed by Dr. Duff in a printed paper attached to the annexure to the Report, that "all thoughtful, intelligent and liberal minded Hindús" would on reflection "acknowledge the rectitude of a measure which, while relieving by doing justice to one party, does no injustice to the other, whose own law is thereby not only respected, but is really upheld as inviolate."

The Hon'ble RÁJÁ SÁHIB DYÁL said that he could not support this Bill, as its provisions were opposed to the religious belief of the Hindús and would be very distasteful to the people.

The Motion was put and agreed to.

The Hon'ble the LIEUTENANT-GOVERNOR begged to propose an amendment in the first Section. Instead of the Short Title "The Native Converts' Divorce Act, 1866," he would propose, "The Native Converts' Marriage Dissolution Act, 1866." Divorce was a large word which included a great deal which this Bill did not provide for, and it was probable that before very long, some further

measure would have to be introduced in this Council which might more properly be called a Divorce Act. He thought that the word "Divorce" conveyed to all English ears a proceeding caused in consequence of adultery or some moral delinquency on the part of the respondent. It did not appear that there would be any proceedings under this Act, in which the respondent might not be actuated, at all events, by respectable motives. Therefore, perhaps the words "Marriage Dissolution" might be inserted in the Short Title of this Act, more fitly than the word "Divorce."

The Hon'ble the PRESIDENT said that the matter was not of much importance, as the Short Title was merely inserted to facilitate reference in Acts and legal proceedings, and did, he thought, in the present case, describe the Bill with sufficient accuracy. He had, however, no objection to the amendment.

The Motion was put and agreed to.

The Hon'ble the PRESIDENT moved that the words "High Court" shall mean the highest Civil Court of Appeal in any place to which this Act extends," be inserted in Section 2, after the definitions of "month" and "year."

The Motion was put and agreed to.

The Hon'ble the PRESIDENT also moved that the word "shall" be substituted for the word "may" after the word "Judge" in line 2 of Section 23.

The Motion was put and agreed to.

The Hon'ble the PRESIDENT also moved that, in lieu of Section 33 of the Bill as amended by the Select Committee, the following new Sections be substituted :—

"33. No appeal shall lie against any order or decree made or passed by any Court in any suit instituted under this Act; but if at any stage of the suit, the respondent shall allege by way of defence that the marriage between the parties has been dissolved by the conversion of the petitioner, and that consequently the petitioner is not a Native husband or a Native wife (as the case may be) within the meaning of this Act, the Judge, if he shall entertain any doubt as to the validity of such defence, shall, either of his own motion or on the application of the respondent, state the case and submit it with his own opinion thereon for the decision of the High Court.

"33*a*. Every such case shall concisely set forth such facts and documents as may be necessary to enable the High Court to decide the questions raised thereby, and the suit shall be stayed until the judgment of such Court shall have been received as hereinafter provided.

"33*b*. Every such case shall be decided by at least three Judges of the High Court, if such Court be the High Court at any of the Presidency Towns; and the petitioner and respondent may appear and be heard in the High Court in person or by Advocate or Vakeel.

"33*c*. If the High Court shall not be satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the High Court may refer the case back to the Judge by whom it was stated, to make such additions thereto or alterations therein as the High Court may direct in that behalf.

"33*d*. It shall be lawful for the High Court upon the hearing of any such case to decide the questions raised thereby, and to deliver its judgment thereon containing the grounds on which such decision is founded; and it shall send to the Judge by whom the case was stated a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Judge shall, on receiving the same, dispose of the case conformably to such judgment."

He said that he would state shortly, that these Sections were intended to give a respondent denying the jurisdiction of the Court, on the ground that the petitioner was not a Native husband or a Native wife, some sort of appeal. He could not ask the Council to give an appeal in ordinary form for two reasons. In the first place, the appeal would be certain to be abused, and in the next place, the relation of the parties was not that relation of opposition which admitted of an appeal being granted. A husband and wife, under the procedure contemplated by the Bill, could hardly be said to be opposed as plaintiff and defendant. He thought that the exigencies of the case would be met by the machinery set forth in the amendment, a procedure which he should be glad to see more often resorted to in India. The Judge, if he entertained any doubt as to the validity of the defence, would state the case, and submit it, with his own opinion, to the High Court, and the suit would be stayed, and the judgment passed conformably to the opinion of that Court. At any rate some one Judge of some District in India would state a case, and that would enable the High Court to decide the point once for all. In these days of High Courts, uniformity of decisions would soon be attained, and one case would govern the decisions throughout a whole Presidency.

He would proceed to explain how it was that the Bill hinged on the power of the petitioner to satisfy the definition of "Native Husband," and in giving that explanation, he should probably answer the remarks which had been made by His Honour the Lieutenant-Governor of Bengal on the subject of the

exemption of Mahomedans. The Council would recollect that the whole difficulty was created by the condition which was to be fulfilled by the Native converts before marrying under the Marriage Act, XXV of 1864, or V of 1865. That condition was that neither of the parties intending to be married should have a wife or husband alive. If, then, under the Native law, if under the matrimonial law applicable to the case, it was quite clear the first marriage had been dissolved, that condition was satisfied, and the present Bill was not wanted. Relief was only required when the first marriage still subsisted by the civil law, and then and there only the provisions of the Bill would come into play.

It was intended exactly to meet the difficulty, and not to go beyond it. In carrying out this view of the Bill, the Select Committee, when it was considering the position of the Mahomedans, came to the conclusion that, under the Mahomedan law, the marriage was dissolved by conversion. It did not express any approval of the principle, and he would remind His Honour the Lieutenant-Governor, that the Bill did not enact that in the case of a Mahomedan convert the marriage was dissolved; it only recognized the fact of the dissolution under the Mahomedan law. It was so clear that, under Mahomedan law, marriage was dissolved on conversion, that the Committee did not think it worth while to bring Mahomedans under the procedure. This exemption had, however, entailed some consequences which were not expected. It certainly had the effect of causing a certain number of Hindús to petition against the Bill. The signatures were not very numerous, considering that they were the result of a rather active agitation: there appeared to be certainly less than 2,000 of them. They came from places in the North-West, where Hindús were much mixed up with Mahomedans; and the petitioners seemed to be under the impression that some preference or precedence was given to Mahomedans. Nothing was farther from the mind of the Committee, or his own mind. He quite agreed with the Lieutenant-Governor in disapproving the Mahomedan view, and in believing that abuses might arise from it which might render legislation necessary hereafter. So far indeed from intending any slur on the Hindús, he would say that, from his own point of view, he rather thought that their non-exclusion was a compliment to them, for it showed that the Committee were of opinion that the Hindú conception of marriage resembled that of the Western nations, who held that marriage ought to be a *consortium totius vitæ*, much more than did the Mahomedan theory.

It had been alleged by some of the petitioners that under their law also a marriage was dissolved by the conversion of either partner. That there was much difference of opinion on the subject might be inferred at once from the contradictory observations of Rájá Sáhib Dyál and the Mahárájá of

Vizianagram. He might remind the Council that there was some antecedent presumption that, under Mahomedan law, dissolution of marriage followed conversion; for Mahomedanism was a system founded on conversion. It was therefore perfectly possible that the contingency of a re-conversion had been provided for from the first. But Hindúism was nothing of the kind. Hindúism was a social system sanctioned by supposed Divine ordinances; and the inference was that membership in it was regarded as such a privilege that no one would willingly forego it. Hence all antecedent probabilities were in favour of the conclusion, that under Hindú law conversion would not operate as a dissolution of marriage.

He had gone through the opinions of the Pundits appended to the various petitions that had been received, and had done his best to draw a proper conclusion from them. To an English lawyer, all Hindú law appeared like law in the gaseous, or at most fluid, condition. But he had had the most learned assistance in India in interpreting the citations annexed to these opinions, and the conclusion he had come to was, that in the earliest authorities, there was no reference to conversion at all. They considered that a man might sometimes forego his birthright by stress of passion or necessity. But they did not seem to have contemplated that which we now call conversion, that is, the substitution of one set of alleged spiritual truths for another. It did not appear to have occurred to them that, by mere disbelief, a Hindú could give up the privileges to which he had been born. When you came a little lower, there were no doubt found certain vague references to contemners of the Vedas: these passages were said to be pointed at the Buddhists or the materialistic sects; and certainly there were some of them in which the person guilty of the offence described was said, in a vague sort of way, to become an outcast. It was now alleged that this language applied to the Christians, and in fact every thing depended upon the correctness of this application. But even then the desired end was not reached, and it was only by a very long artificial chain of reasoning that we could arrive at the conclusion that a convert's marriage was dissolved. Dr. Duff, in a paper recently printed, had stated that "the result of our inquiries led us to conclude that, while a change of religion did not absolve any convert, male or female, from a previous lawfully contracted marriage alliance, such change, in the case more especially of conversion from Hindúism, entitled the unconverted party to treat the other (by Hindú law) as *civilly dead*, and consequently, as *ipso facto* repudiated." That might be so. But you could not put civil death above natural death; and yet it was quite notorious that before the Widow Marriage Act, in the opinion of the so-called orthodox Hindús, not even natural death dissolved a marriage. They admitted that there were authorities

in their works which seemed to show that a widow might re-marry when her husband became an outcast, or was dead; they argued that those passages which had once been binding had ceased to confer liberty or create obligation. This was the *Kali yuga*, the Fourth Age, and there were many liberties once enjoyed which had been abrogated. It did seem to him, so long as this theory of a *Kali yuga* was maintained, it was quite impossible to come to a positive conclusion on any point of Hindú law that had not been sanctioned by constant usage or decided expressly by judicial authority. However, he did not put himself forward as an authority on Hindú law, and the practical conclusion he came to was that the decision of the question, whether or not, in the case of a Hindú, conversion operated as a dissolution of marriage, was one which must be left to the Courts, and the Section which he proposed to move would facilitate the attainment of the requisite decisions.

There was another course of reasoning which he had to meet. "You admit," it was said, "that by Hindú law a convert to Christianity becomes an outcast." Now, in fact, this was a proposition which MR. MAINE neither affirmed nor denied; but assuming it to be sound, it was said you ought to carry the doctrine farther, and grant a divorce as a logical consequence of the husband's outcast condition. That brought us to the important question which met us constantly in legislation—the question, what were we to do when we came upon a rule of Native law to which we objected on strong moral grounds? MR. MAINE confessed that on moral grounds he objected to the Mahomedan rule of divorce by conversion, and as regarded persons becoming outcast by conversion from Hindúism to Christianity, many of the Native gentlemen who signed the petitions were sensible men, and must understand that it was absurd to expect the Members of the British Government quite to hug this theory to their hearts. Perhaps ours was the first Government that had ever allowed its subjects such ample freedom of expressing their opinions as to its religious position. What then was to be done? MR. MAINE said that the clear rule was to accept these objectionable positions as we found them, and if they were clearly established, we did not make them, and were not responsible for them. But we should not go a step further. We should not turn the objectionable rule into a basis for further legislation. We should not put a legislative superstructure upon that which we considered morally unsound. If we once began legislating, we could not, he repeated, avoid the necessity of declaring what *ought* to be. The practical result of the amendments which he proposed was to enable a Court of law to declare, with regard to Hindúism as a whole, or any particular Hindú sect, or any of the non-Hindú religions of India, whether a convert's marriage was dissolved by the fact of conversion.

The Motion was put and agreed to.

The Hon'ble the PRESIDENT also moved that the necessary alteration of the numbers of the Sections might be made.

Also that the words "and that there are now living children, and no more, of such marriage, aged respectively and years" be omitted in paragraph 4 of the first Schedule.

The Motions were put and agreed to.

The Hon'ble MR. MUIR moved that the following Sections be substituted for Sections 15, 16, 17, 18 and 19 :—

"15. If the respondent be a female, and in answer to the interrogatories of the Judge or Commissioners, as the case may be, shall refuse to cohabit with the petitioner, the Judge, if upon consideration of the respondent's answers and of the facts which may have been proved by the petitioner he shall be of opinion that the ground for such refusal is the petitioner's change of religion, shall make an order adjourning the case for a year, and directing that in the interim, the parties shall, at such place and time as he shall deem convenient, have an interview of such length as the Judge shall direct, and in the presence of such person or persons (who may be a female or females) as the Judge shall select, with the view of ascertaining whether or not the respondent freely and voluntarily persists in such refusal.

"16. At the expiration of such adjournment the petitioner shall again appear in Court and shall prove that the said desertion or repudiation had continued up to the time last hereinbefore referred to ; and if the points mentioned in the twelfth and this Section of this Act shall be proved to the satisfaction of the Judge, and if the respondent on being interrogated by the Judge or Commissioners, as the case may be, again refuse to cohabit with the petitioner, the respondent shall be taken to have finally deserted or repudiated the petitioner, and the Judge shall, by a decree under his hand and sealed with the seal of his Court, declare that the marriage between the parties is dissolved."

He said it had been incidentally noticed in the remarks which fell from the Lieutenant-Governor and Mr. Taylor, that they were in favour of the amendment which he now proposed as an amelioration and simplification of the procedure ; and he gathered from what Mr. Maine had said, that the Hon'ble the President himself would not oppose the amendment, however much he might prefer the Bill in its present shape. Under these circumstances, it would not be necessary for him to say much in recommending his present motion to the favour of the Council.

The amendment related to the number of times the female respondent was required to appear in Court, the number of interviews, and the nature of the interview. MR. MUIR assumed that the procedure had the following objects in view ; *first*, to interpose a sufficient interval for thought and deliberation on the part of the respondent, so that the decree should not issue precipitately on the first refusal ; *second*, to ascertain that the repudiation was voluntary and decided ; *third*, to furnish to the husband an opportunity of personal explanation out of Court, and with a certain degree of privacy. Now he (MR. MUIR) held that, if these objects could be sufficiently attained by a smaller number of appearances, then it was right and proper to modify the Bill in that direction. For it must not be forgotten that these might be most harassing ; and that, according to the feelings and customs of the country, the obligation of females to appear in Court would be often painful and humiliating, even in those ranks of society which were not by law exempted from personal appearance in our Courts. This was one of the chief grievances alleged by the Native community against the Bill, and he (MR. MUIR) thought it might be materially lessened.

As the Bill now stood, if the respondent were a female, there was a first appearance in Court by the petitioner, and an interrogation of the respondent by the Judge or by a Commission, then an order adjourning the case for a month, during which there was to be a private interview between the parties ; then a second appearance in Court ; then an adjournment for one year ; then a farther adjournment and a second interview ; and after that a third appearance in Court, before the decree of dissolution could be passed. Thus there must be three appearances in Court, and two interviews. Under the amendment, there would be a first appearance in Court, and an interrogation of the respondent by the Judge or by a Commission ; then an adjournment for a year, during which an interview would be arranged ; then a final appearance in Court, and another interrogation by the Judge or by a Commission, when, if the respondent persisted in the repudiation, the decree would issue. This seemed to him to provide a quite sufficient test of deliberate and voluntary desertion, and it effected also an important diminution in the number of appearances.

Then as to the nature of the interview, the present Section 15 enacted that it was to be private, but subject to any conditions as to privacy which the Judge should see fit. No doubt the Judge under this discretion would ordinarily provide for some third party being present at the interview, but the terms of the law did not require it ; the interview might be wholly private ; there was nothing in the law to prevent the respondent being left entirely alone with the petitioner ; and objection had been naturally taken to the leaving of discretion on such a point to the Judge. The amendment required that the interview should be in presence of such person or persons, who might be a female or females, as the Judge might select for the purpose of ascertaining the free and voluntary

persistence of the respondent in her refusal Any possibility of impropriety was thus removed from the provision.

If these amendments were carried, he (MR. MUIR) believed that it would be felt as a sensible concession on the part of the Legislature to the Hindú objections, while the procedure continued to be as efficient in all essential points as before. He believed that the law thus modified would deal as tenderly and gently with the female respondent as consisted with the effective attainment of the object which it had in view.

The Hon'ble the PRESIDENT said that it was not without great doubt and misgiving he had decided not to oppose Mr. Muir's amendment. He did not think his own procedure too stringent; and indeed, if the papers were consulted, the weight of opinion would be found in favour of a still more searching procedure. But MR. MAINE had admitted, in beginning the debate, that there were several gentlemen at the table who knew the people and the country far better than he did, and he was bound to bow to the opinion of the Lieutenant-Governor and Mr. Muir, who thought the procedure, unless reduced to the lowest point in accordance with Mr. Muir's amendments, was not to be reconciled with Native usage and sentiment. MR. MAINE gave way with the more satisfaction to himself, because his Hon'ble friends were not of that class who exaggerated the difficulties from the Native side, on account of theological objections to the rare divorces which the Bill would permit. Both had been warm supporters of the measure from the first. Had Mr. Muir proposed and persuaded the Council altogether to suppress the interviews, nothing should have induced him (MR. MAINE) to go further with the measure, and he must have left to others the thankless task of endeavouring to settle this perplexing difficulty. The value of the interviews, he repeated, consisted in the opportunities they gave, not so much for solicitation as for explanation, and judicial interrogatories were no substitute for them. As Mr. Muir's amendment still left some procedure, and provided some security for the ascertainment of intention, MR. MAINE would give way; but he wished it to be understood that he did so, not in conformity with his own ideas of right, but in deference to the representations of others, and in deference to Native usage and Native feeling.

The Motion was put and agreed to.

The Hon'ble the PRESIDENT then said that the adoption of Mr. Muir's amendment necessitated some alteration in the wording of Section 20. He accordingly moved that, instead of the words "and allege as the ground for such refusal that the petitioner has changed her religion, the Judge," in lines 6, 7 and 8, the words "the Judge, if upon consideration of the respondent's answers and of the facts which may have been proved by the petitioner he shall

be of opinion that the ground for such refusal is the petitioner's change of religion," be substituted.

The Motion was put and agreed to.

The Hon'ble MR. MUIR also moved that, in Section 28, lines 14 and 15, for the words "interviews and adjournments," the words "interview and adjournment" be substituted.

Also that Section 26 be omitted, and the necessary alteration of the Section numbers be made.

The Motions were put and agreed to.

His Honour the LIEUTENANT-GOVERNOR said that, with the President's permission, he would move an amendment in Section 28. That Section provided for revival of a suit dismissed on certain grounds. The three grounds on which a suit might be dismissed, as mentioned in Section 27, were, (1) "that the male party to the suit is or was at the institution thereof under the age of 16 years," or, (2) "that the female party to the suit is or was at the same time under the age of 13 years," or (3) "that the petitioner and the respondent are cohabiting as man and wife, or if the Court is satisfied by the evidence adduced that the respondent is ready and willing so to cohabit with the petitioner."

It appeared to him that, although the suit might be revived in the first two cases, it was extremely doubtful whether the suit should be revived when the petitioner and respondent were cohabiting as man and wife. It seemed to him that, when this Act had once served its purpose of bringing the parties together, it should not revive the machinery for bringing the parties together all their life-time, for as long as it might suit their purpose. He would therefore suggest that the decree should be revived only in the case of the first two grounds mentioned in Section 27, but that, as to the third, the time be limited to one year. It was extremely unlikely, after a suit was brought and dismissed on the ground that either of the parties to the suit was under age, that either of the parties should be under age within one year after the suit was brought. He would therefore move the insertion of the words "within twelve months" after the word "time" in line 1 of Section 28.

The Hon'ble the PRESIDENT said he had no objection to the limitation proposed by His Honour the Lieutenant-Governor.

The Motion was put and agreed to.

The Hon'ble the PRESIDENT then moved that the Bill as amended be passed.

The Motion was put and agreed to.

INDIAN MARRIAGE ACT EXTENSION (HYDERABAD) BILL.

The Hon'ble the PRESIDENT presented the Report of the Select Committee on the Bill to extend the Indian Marriage Act, 1865, to the Hyderabad Assigned Districts.

The Hon'ble the PRESIDENT having suspended the Rules for the Conduct of Business, moved that the Report be taken into consideration.

The Motion was put and agreed to.

The Hon'ble the PRESIDENT said that the Council would no doubt remember that this was merely a Bill to extend, under the powers conferred on this Council by the Statute 28 Vic., cap. 17, the Indian Marriage Act of 1865 to the Hyderabad Assigned Districts. He had now an amendment to propose in the Bill, which had been suggested by Mr. Yule, who was now the Resident at Hyderabad. Mr. Yule proposed that the Bill should not only apply to the Hyderabad Districts, but also to the Cantonment of Secunderabad. It was thought desirable to add the Cantonments of Trimungerry, and Aurungabad. The amendment was accordingly that the words "and the Cantonments of Secunderabad, Trimungerry, and Aurungabad" be added at the end of the Title, Preamble, and first Section of the Bill.

The Motion was put and agreed to.

The Hon'ble the PRESIDENT then moved that the Bill be passed.

The Motion was put and agreed to.

The Council adjourned *sine die*.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Dept. (*Legislative*).

CALCUTTA,
The 31*st March* 1866.

G. I. C. P. O.—No. 31 L. D.—13-8-95.—100.—W. B. G.

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at a Simla on Wednesday, the 16th May 1866.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding.*
His Excellency the Commander-in-Chief.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Colonel H. M. Durand, C.B.
The Hon'ble W. Muir.
The Hon'ble H. P. A. B. Riddell.

The Hon'ble MR. RIDDELL took the oath of allegiance and the oath that he would faithfully discharge the duties of his office.

BOMBAY HIGH COURT LETTERS PATENT AMENDMENT ACT.

The Hon'ble MR. MAINE moved for leave to introduce a Bill to amend two clerical errors in the Letters Patent of the High Court of the Presidency of Bombay, dated the 28th December 1865. He said the Letters Patent contained this sentence, which it had been ascertained occurred in the engrossed copy, "And we do further ordain that the said High Court of Judicature at Bombay shall have Ordinary Original Criminal Jurisdiction within the local limits of its Ordinary Original Civil Jurisdiction, and also in respect of all *such* persons beyond such limits over whom the said High Court of Judicature at *Fort William in Bengal* shall have Criminal Jurisdiction at the date of the publication of these presents." It might be supposed that these were blunders of the law stationer. The Bill simply corrected the two mistakes, and provided that the High Court of Judicature of Bombay should have "Ordinary Original Criminal Jurisdiction within the local limits of its Ordinary Original Civil Jurisdiction, and also in respect of all persons beyond its limits over whom the said High Court of Judicature *at Bombay* shall have Criminal Jurisdiction at the date of the publication of these presents." He would read the Section of the

Letters Patent which have legislative power in this respect to the Council of the Governor-General :—'

"44. And we do further ordain and declare that all the provisions of these Our Letters Patent are subject to the legislative powers of the Governor-General in Council, exercised at Meetings for the purpose of making Laws and Regulations and also of the Governor-General in cases of emergency, under the provisions of an Act of the twenty-fourth and twenty-fifth years of Our Reign, chapter sixty-seven, and may be in all respects amended and altered thereby."

Power of Indian Legislature preserved.

The Motion was put and agreed to.

The Hon'ble MR. MAINE having applied to His Excellency the President to suspend the Rules for the Conduct of Business.

The President declared the Rules suspended.

The Hon'ble MR. MAINE then introduced the Bill, and moved that it be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill be passed.

The Motion was put and agreed to.

The Council then adjourned.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

SIMLA,
The 16th May 1866.

C. I. C. P. O.—No 44 L. D.—17-5-1906

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Simla on Wednesday, the 11th July 1866.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Colonel H. M. Durand, C.B.
The Hon'ble W. Muir.
The Hon'ble H. P. A. B. Riddell.

HIGH COURT, NORTH-WESTERN PROVINCES, PROCEDURE BILL.

The Hon'ble MR. MAINE, in moving for leave to introduce a Bill to amend the procedure of Her Majesty's High Court of Judicature of the North-Western Provinces of the Presidency of Fort William, said that the matter was urgent, as there was no available procedure for the trial of European British subjects by the new High Court of the North-Western Provinces. It was almost unnecessary to remark that one of the most important branches of jurisdiction of that Court, was its power to try, under Clause 15 of its Letters Patent, European British subjects. In fact, the desirability of creating a tribunal for the trial of such persons, less remote than the High Court at Calcutta, had been one of the principal reasons for the establishment of the High Court at Agra. The jurisdiction in question was intended to correspond with that exercised on the one side by the Chief Court in the Punjab, and on the other by the High Court of Bengal, whether holding its ordinary sittings at the Presidency Town, or carrying out a system of local trial by Judges under Commissioner, a system which had been already arranged between the Government of India, the High Court, and the Government of Bengal, and which would come into operation as soon as His Excellency in Council had been assured by the Government of Bengal that proper places of intermediate custody for Europeans had been provided. A difficulty, however, arose in con-

sequence of the manner in which Clause 29 of the Letters Patent was framed. Under that Clause the procedure in all criminal cases brought before the new Court in the exercise of its ordinary original criminal jurisdiction, was to be regulated by the procedure and practice which were in use in the High Court of Fort William immediately before the 11th June 1866, the date of the publication of the Charter, subject to any law which had been or might be made in relation thereto by competent legislative authority in India. It was doubtful whether the procedure thus referred to was that in force in the High Court at Calcutta at its usual place of sitting, or whether it was the modified procedure provided by Act No. XIII of 1865 for the Judges of the High Court acting under Commission in the Mofussil. It was probable that the latter system was intended, but both systems were inapplicable to the High Court of the North-Western Provinces; the first, because that High Court had not the elaborate official machinery, the growth of nearly a hundred years, which was necessary to work it; the second, because the provisions of Act No. XIII of 1865 which applied to the Mufussil, were designed for the case of single Judge going temporarily on circuit—a state of things obviously different from that of a Court generally exercising its jurisdiction at a permanent place of sitting.

He, therefore, proposed that the Council should exercise the legislative powers to which, under Clause 35, the provisions of the Letters Patent were subject. Sections 2 to 17 of the Bill provided a criminal procedure, which was neither that of the Presidency towns, nor that provided by Act No. XIII of 1865 for Judges action under Commission. They were transcribed with a few necessary modifications from the Punjab Chief Court Act (No. IV of 1866), Sections 21 to 36. The principal of these modifications were the following :—In Section 2 reference was made to a recent Act of Parliament (28 Vic, cap. 15, Section 3) empowering the Governor General by order to alter the local limits of the jurisdiction of the High Court as regarded European British subjects. Under Section 3, not only the High Court, but any Officer specially authorized by the High Court, would consider the charge and might amend, alter, or add to the same. Section 7 provided that the High Court should ordinarily hold its sittings at such place as the Lieutenant-Governor should direct; but that the High Court, or any Division of the High Court, might, from time to time, with his approval, hold sittings at such other places in the North-West Provinces as should seem convenient. The provision as to the Division of the High Court had been introduced at the suggestion of the Hon'ble the Judges of that Court, and was likely to be useful when the Court should be in course of removal from Agra to Allahabad. In Section 9 a Clause, modelled on Section 436 of the Code

of Criminal Procedure, empowered the High Court to direct that persons charged should be admitted to bail, or that the bail required should be reduced.

The opportunity of the present Bill had been taken of making some amendments of the civil, testamentary and intestate procedure of the Court. Sections 18 to 21 corresponded with Sections 5, 6, 8, 9 of Act No. XX of 1862, which suspended the operation in the High Courts at Calcutta, Madras, and Bombay of certain Sections in the Code of Civil Procedure unadapted to Courts of such dignity, and made other useful provisions as to the time of preferring appeals, as to the issue of execution before the ascertainment of amount due for costs, and as to acts required by the Code to be done by a Pleader, but which might, under Act No. XX of 1862, be done by an Attorney. Lastly, Section 22 of the Bill provided that the procedure in all cases which should be brought before the High Court in the exercise of its original, testamentary and intestate jurisdiction, should be regulated, so far as the circumstances of the case would admit, by the rules of procedure laid down in the Indian Succession Act, 1865. This provision was not absolutely necessary, as Clause 28 of the Charter empowered the High Court to make rules and orders as to the proceedings in its testamentary and intestate jurisdiction. But the Section in question was almost identical with a rule which had recently been made by the High Court at Calcutta, and as it was desirable that uniformity in such matters should, so far as possible, prevail throughout India, the present Section had been introduced into the Bill with the concurrence of the Judges of the High Court of the North-West Provinces.

The Motion was put and agreed to.

The Hon'ble MR. MAINE then applied to His Excellency to suspend the Rules for the Conduct of Business.

The PRESIDENT declared the rules suspended.

The Hon'ble MR. MAINE then introduced the Bill and moved that it be taken into consideration. In doing so he observed that, as the matter was urgent, as the Bill was little but a transcript from former Acts, and as, moreover, it had been submitted to and approved by the Hon'ble the Judges of the new High Court, it was desirable that it should be passed at once.

The Motion was put and agreed to.

The Hon'ble MR. MAINE then moved that the Bill be passed.

The Motion was put and agreed to.

HIGH COURTS' DEPOSITS TRANSFER TO GOVERNMENT BILL.

The Right Hon'ble MR. MASSEY introduced the Bill to transfer to the Government of India certain securities and monies deposited in the High Courts of Judicature at Fort William, Madras and Bombay, and in the Supreme Court of the Straits' Settlement, and the proceeds of certain estates in the charge of the Administrator General of Bengal, and moved that it be taken into consideration. He observed that the Bill had been published three times in the *Gazette*, and that the Council were therefore doubtless acquainted with its provisions. The Statement of Objects and Reasons gave full information as to the circumstances under which the Bill had been prepared. Considerable sums, originally deposited in the course of suits, were now in the High Courts of the three Presidency Towns, and in the Supreme Courts of the Straits' Settlement. Some of these monies had been in deposit so long as sixty years, and all sums so in deposit, on which the Bill proposed to operate, had been unclaimed for more than twenty years. There were also the proceeds of certain estates administered by order of the Supreme Court of the Straits' Settlement which had been unclaimed for fifteen years. The Bill proposed to transfer all these sums to Government. It was not likely that any claims thereto would be preferred. But should any such claim be hereafter established to the satisfaction of the Court from which the transfer had been made, the Government would pay to the claimant the principal so transferred, or so much thereof as should appear to be due to him.

The present opportunity had been taken to remedy a defect in the law regarding unclaimed estates in the hands of the Administrator General of Bengal. Estates administered by the Administrators General of Madras and Bombay, which might be unclaimed for more than fifteen years, were, under Act No. VIII of 1855, Section 51, credited to the general revenues, subject to any claim thereto being afterwards established. But there was, owing doubtless to an oversight, no provision of the kind with regard to estates coming into the official charge of the Administrator General of Bengal, subsequent to the passing of that Act. The present Bill accordingly contained provisions similar to those of the Section just referred to, and would, it it became law, place the assets in the hands of the Administrator General of Bengal on the same footing as those in charge of the two other Administrators General.

These shortly were the provisions of the Bill, which would not, he might remark, injure in any respect the security of such persons as might hereafter establish their claim to any portion of the sums proposed to be transferred. On the contrary, these funds would be safer in the custody of the Government

of India, than they could possibly be even in that of a High Court or Administrator General. It was highly desirable, for financial considerations, that the Bill should pass at once, and he therefore applied to his Excellency the President to suspend the Rules for the Conduct of Business.

The PRESIDENT declared the Rules suspended.

The Hon'ble MR. MASSEY then moved that the Bill be passed.

The Hon'ble MR. MAINE asked whether it had not been suggested that in Section 4 of the Bill, for the words "Accountant General to the Government of Bengal," the words "Comptroller General of Accounts" should be substituted.

The Right Hon'ble MR. MASSEY said that the suggestion had been made, but that he preferred to leave the Bill as it was. The corresponding words in Section 52 of Act No. VIII of 1855 were, "Accountant General to the Governments of Fort St. George and Bombay respectively," and uniformity was of course desirable. Moreover, if the change suggested were made, it might be taken as being impliedly a legislative sanction of the power which he understood, in some instances, the High Court at Calcutta had assumed of granting, and the Administrator General of Bengal of taking out, Letters of Administration in cases of British subjects whose assets were wholly outside the Presidency of Fort William.

The Motion was put and agreed to.

The Council then adjourned to the 18th July 1866.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

SIMLA ;
The 11th July 1866.

Government of India, Central Printing Office—No. 5 (J) L. D.—21-6-1900.—99.

Abstract of the proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Simla on Wednesday, the 5th September 1866.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Excellency the Commander-in-Chief.
The Hon'ble H. S. Maine.
The Hon'ble W. Grey
The Hon'ble G. N. Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Colonel H. M. Durand, C. B.
The Hon'ble W. Muir.
The Hon'ble H. P. A. B. Riddell.

MORTGAGEES AND TRUSTEES' PROPERTY BILL.

The Hon'ble MR. MAINE introduced the Bill to consolidate and amend the Law relating to the conveyance and transfer of property in British India vested in Mortgagees and Trustees, in cases to which English law is applicable, and moved that it be referred to a Select Committee. He said that this Bill, as well as the other which he proposed to introduce to-day, had been prepared some time ago. But as there had been so much other work before the Council, and as on enquiry he had been informed to his surprise that the Bills were not urgently wanted, they had been allowed to stand over. Lately, however, he had received letters on the subject from certain Judges of the High Courts at Calcutta and Agra; and from these it appeared that the two Bills were much needed, and that suitors in some instances were suffering hardship in consequence of the non-existence as law of the provisions which they contained. The learned Judges of the High Courts at Madras and Bombay had also expressed a favourable opinion of the Bills, and a desire that they should be enacted.

The object of the first Bill was to introduce into the English Law of Trusts, as applied in India, most of the improvements which had been introduced into the corresponding province of Law in England. The Bill consolidated a variety of provisions taken from English Acts, and applied them to the circumstances of India.

As Europeans, holding property in India under English Law, were displaying an increasing tendency to hold it as a permanent investment, certain technical difficulties occasioned by the English Law of Trust and Mortgage, were likely to occur with corresponding frequency. These difficulties the Bill was intended either to mitigate or to remove. The Statutes upon which it was based had been found of the utmost practical utility in England.

The Bill was of a technical nature, but its general object might be thus stated. Trusts were usually created under English Law for two reasons,—one, to enable certain persons to enjoy the income of property without having control over the capital; the other, to give to the beneficial interest in property greater plasticity, that was, a greater power of moulding itself to the circumstances of a family or class of persons, than the rules of law admitted of in property which was not subject to a Trust. The first class of Trusts was usually (though not universally) created in personal property, and for the benefit of married women or minors; the second was for the purpose of carrying out the provisions of wills or marriage-settlements, and was commonly (though not always) confined to real property. In both classes of Trusts, the fiduciary interest (that of the Trustee) was separated from the beneficial interest, and the two frequently devolved in different lines of descent. Hence a Trustee might sometimes be a lunatic, or a minor, or a married woman, and would therefore be incapable of acting; or he might have ceased to be within the jurisdiction of the only Court competent to enforce the Trust; or he might be undiscoverable; or he might wilfully refuse to discharge his duties. In all such cases, whether the Trustee were a sole Trustee or one of a number, the greatest possible inconvenience would probably result to the persons beneficially interested. The Bill took in almost all conceivable contingencies in which a Trustee could not or would not fulfil the duties of a Trust, and enabled the High Court to act, or to provide others with the means of acting, in his absence.

Under the English Law of Mortgage, a somewhat similar description of inconvenience occasionally arose. The representative of a Mortgagee might have a merely formal interest in the property mortgaged, and yet it might be impossible to deal with it effectually without his concurrence. The Bill provided the means of obtaining or dispensing with this concurrence in cases where the Mortgagee was unable or unwilling to give it.

A former Trustee Act, 11 Geo. IV. and 1 Will. IV., cap. 60, was in force in this country, having been extended to India by Act XXIV of 1841, and to the Straits' Settlement by Act XIV of 1852. As the English Statute had been

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practically superseded in England by 13 & 14 Vic., cap. 60, and by 15 & 16 Vic., cap. 55, upon which the present Bill was mainly founded, it was proposed to repeal Section 3 of Act XXIV of 1841 (which was the part of that Act having application to Trustees), and so much of Act XIV of 1852 as extended that Section to the Straits. Permission was, however, given to continue proceedings under the old law if the persons interested thought fit to do so.

Some difficulty had been experienced in framing Section 3, which described the persons entitled to have the benefit of the present Bill. It was necessary to describe Europeans in India by reference to their relation to the jurisdiction of the High Court.

MR. MAINE concluded by observing that, as the Bill was almost wholly of a technical nature, as the learned Judges of the High Courts were anxious for it to become law, and as it had been for the most part transcribed from English Statutes, he saw no reason for reserving it for consideration at Calcutta.

The Motion was put and agreed to.

TRUSTEES AND MORTGAGEES' POWERS BILL.

The Hon'ble MR. MAINE then introduced the Bill to give to Trustees, Mortgagees and others, in cases to which English Law is applicable, certain powers now commonly inserted in Settlements, Mortgages, and Wills, and to amend the Law of Property and relieve Trustees, and moved that it be referred to a Select Committee. He said that much the same considerations applied to this Bill as to that which had just been introduced and referred. This Bill was intended to introduce into the English Law of Property, as applied in India, a number of improvements which had from time to time been effected in that Law by the Statutes known as Lord St. Leonards' Acts. The exact limits of the English Law of Property in India did not seem to have ever been accurately ascertained. But there could be no doubt that, through the purchase of land under the waste-land rules, and through its acquisition by Englishmen in the Mofussil on tenures analogous to fee-simple, those limits must be constantly enlarging themselves. If in cases to which English Law was applicable, the conveyances by which rights were transferred were briefly or hastily framed, some of the provisions of this Bill would probably be found of special utility.

There might not appear to be much obvious connection between many of the subjects affected by the Bill, but this miscellaneous character belonged also to the English Statutes on which the Bill was founded, which were not directed to the general reconstruction of any one department of Law. The object of the learned

author of these Statutes seemed rather to have been to apply remedies to various defects which the practical working of the English Law of Property had disclosed, and to mitigate inconveniences which experience had shown to be perpetually occasioned by errors and omissions in legal instruments. Lord St. Leonards appeared to have had in his mind a typically perfect deed, and to have taken for granted that such omissions must have been unintentional.

Much of the Bill referred to improvements of a wholly technical character; but attention must be drawn to one or two points, on which the changes proposed to be effected were of considerable importance.

By Section 6, which corresponded with Section 11 of the Statute 23 & 24 Vic., cap. 145, every Mortgage Deed, unless it contained an express declaration to the contrary, would be liable to be construed as if it conferred on the mortgagee a power to sell the mortgaged property, if the interest secured were in arrear for six months; or the mortgagee might, if he preferred it, in the like event appoint or obtain the appointment of a Receiver, who would collect the rents and profits of the property and apply them to the payment of overdue interest, paying over the balance to the mortgagor. The insertion in Mortgage Deeds of these powers (of sale and of appointing a Receiver) had become so nearly universal in England, that their omission in any one deed might fairly be presumed to be the result of accident or neglect. Whether the same presumption arose in India was a point open to consideration, and one which would doubtless receive the attention of the Council. His experience of the way in which deeds were prepared in India was, he regretted to say, in favour of the existence of the presumption referred to. As regarded the power of sale, he might observe that ever since the passing of the 15th & 16th Vic., cap. 86, the Court of Chancery had been enabled to direct a sale of mortgaged property instead of a foreclosure of the equity of redemption, and he considered the remedy by a sale, after which the proceeds would be divided among all persons (including the mortgagor in case of a surplus) equitably entitled thereto, as far more just and as likely to cause far less hardship than a foreclosure.

Section 33 embodied a provision which worked most beneficially in England. It enabled Trustees to apply the income of Trust property to the maintenance and education of infants who might be entitled to it, without the necessity of applying to any Court, and even though no power so to apply it had been inserted in the Trust-deed.

The succeeding Sections down to Section 37 further enlarged the powers of acting Trustees, and relieved them from many risks to which they were at present exposed.

The provision in Section 42 had to a very great extent superseded, in England, the necessity of instituting suits in the Court of Chancery for the administration of deceased persons' estates. It enacted in effect that an Executor or Administrator should be at liberty to give, by advertisement in the newspapers or otherwise, the same public notices which, in the case of an administration suit, the High Court would direct to be given. Having done this, and having satisfied the claims which had been preferred within a certain interval after the notices, he would be discharged from further liability. Section 320 of the Indian Succession Act, 1865, was, however, almost identical with this provision; and the Committee to which the Bill would be referred might perhaps come to the conclusion that the Section now under consideration, which was framed (it must be recollected) before the Indian Succession Act passed, might now be dispensed with.

It had been found useful in England to permit Trustees, Executors, and Administrators to apply in a summary way for the advice and guidance of the Court of Chancery. A power to make applications of this nature to the High Court was given by Section 43 of this Bill.

The English Statutes which, in this Bill, were consolidated and adapted to this country, were 22 & 23 Vic., cap. 35 (An Act to further amend the Law of Property and to relieve Trustees), and 23 & 24 Vic., cap. 145, (An Act to give to Trustees, Mortgagees and others, certain powers now commonly inserted in Settlements, Mortgages and Wills). Many of their provisions had been wholly omitted as inapplicable to India.

The Motion was put and agreed to.

The following Select Committees were named:—

On the Bill to consolidate and amend the Law relating to the conveyance and transfer of property in British India vested in Mortgagees and Trustees, in cases to which English Law is applicable—the Right Hon'ble Mr. Massey and the Hon'ble Messrs. Muir, Riddell and the mover.

On the Bill to give to Trustees, Mortgagees and others, in cases to which English Law is applicable, certain powers now commonly inserted in Settlements, Mortgages and Wills, and to amend the Law of Property, and relieve Trustees—the Right Hon'ble Mr. Massey, and the Hon'ble Messrs. Muir, Riddell and the mover.

The Council then adjourned.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

SIMLA,
The 5th September 1866.

Military Orphan Press.—No. 15 L. C.—17-9-66.—200.

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Simla on Wednesday, the 10th October 1866.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding.*
His Excellency the Commander-in-Chief.
The Hon'ble H. S. Maine.
The Hon'ble W. Grey.
The Right Hon'ble W. N. Massey.
The Hon'ble Colonel H. M. Durand, C B.
The Hon'ble W. Muir.
The Hon'ble H. P. Riddell.

OUDH SUB-SETTLEMENT BILL.

The Hon'ble MR. MUIR, in moving for leave to introduce the Bill to legalize the rules made by the Chief Commissioner of Oudh for the better determination of certain claims of subordinate proprietors in that Province, said that this Bill was brought forward with the view of giving legislative authority to the arrangements lately sanctioned by the Government of India, for the settlement of certain classes of estates held under Sanad by the great landholders in Oudh.

The reasons which had led to those arrangements had been already fully detailed in the correspondence between the Government and Mr. Strachey, the Chief Commissioner of Oudh, already published in the *Gazette of India*, and he need not therefore refer to them more particularly now.

The Bill related only to that portion of the arrangements in question which provided for the rights of Sub-Proprietors or Zamíndárs, and the terms on which they were to be admitted to settlement. It had no reference to the arrangements concluded in respect of non-proprietary cultivators.

Perhaps some remarks were necessary on the shape and form of the Bill. As the Chief Commissioner's rules embodied stipulations which formed a sort of compromise with the Táluqdárs on certain debated points, it had been deemed

advisable to retain them, as a Schedule to this Bill, in the very words and in the exact form in which they were concluded. But it was really in respect of only a limited portion of these stipulations that necessity for legislation existed. In many points the rules simply enunciated the law as it was acknowledged by the Courts in Oudh.

For example, the provision for maintaining, under a proprietary title, the "nánkár" lands in the possession of ex-proprietary claimants, was nothing more than a statement of the law and practice recognized by the Courts. So with the rules for the determination of the revenue demandable by the Táluqdárs from the sub-proprietors. This was a matter within the exclusive jurisdiction of the Revenue authorities acting administratively under the instructions of the Executive, and their action in this respect could not be called in question by the Courts.

There were in fact, perhaps, only two of the rules, the 3rd and the 8th, which required legislation to make them binding on the Courts. He would refer briefly to each of these.

The 8th rule laid down that, even in cases where the sub-proprietary title was otherwise fully established, still if the average profits of the sub-proprietors during the period of limitation, or so far as they could be ascertained, were found to have fallen short of twelve per cent of the gross rental, then the sub-proprietors were not to be admitted to engagements. They were to be excluded: but in lieu of a sub-settlement, their "sír" and "nánkár" lands, under a proprietary title, were to be made up to ten per cent of the gross rental of the whole estate. In properties of which the sub-proprietors had been unable to secure a larger profit, in virtue of their proprietary right, than twelve per cent. of the rental, it might reasonably be presumed that the superior proprietor had materially encroached upon that right, and had left the Zamíndárs but a weak and unprofitable title: and it might be held that so feeble and imperfect a right did not justify the claim of the sub-proprietors to a sub-settlement of the entire estate. The assignment of a nánkár allowance, equal to ten per cent. of the rental, might be assumed as placing them in a position nearly as profitable as that which they formerly held. It would not indeed be a position of so much influence and importance. But the amount of profit would be about the same, and consequently the arrangement might be held to be reasonable and equitable. Still it was doubtful whether the arrangement would be recognized by the Courts, unless sanctioned by the Legislature.

The second case was that of Rule 3. This reduced to a precise formula the law of limitation for sub-settlements, which had been hitherto contained in vague and somewhat uncertain rulings; or rather it laid down the length of possession within the period of limitation, necessary as evidence of a good Zamíndárí title. It ruled that for any claimant (not in possession at the date of annexation) to obtain a decree for sub-settlement, he must prove, not only that he had been in possession within the period of limitation, but that he had been in possession *under the superior for a given number of years*—the proportion being laid down generally as not less than one-half of the entire period of limitation, and one year in addition. This rule was held by the Chief Commissioner to be the reduction to a precise form of a principle recognized (although embodied hitherto in vague and indefinite terms) in Oudh, and therefore to be conformable to the law. It was, however, well known that some Judicial Officers in Oudh did not concur in this opinion. These held that wherever a claimant proved that he was the Zamíndár, then possession for even a single year within the term of limitation would entitle him to a sub-settlement: and decisions had actually been given by the Courts upon that basis. Such Officers would not acknowledge an administrative order of the Government, believed by them to be in conflict with the law; in spite of the instruction, they would feel bound to follow the law. And therefore it was absolutely necessary to give legal force to such instruction, if it was to be binding upon the Courts.

If the latter rule to which he (MR. MUIR) had now adverted should appear to bear hardly on the Zamíndárs, it must be remembered that, under the Oudh system, these ousted proprietors would still be entitled to hold as property the sír or nánkár land which they possessed. This was a peculiar virtue of the Oudh system of settlement, as compared with the systems elsewhere; and to the merit of introducing it the late Chief Commissioner Sir C. Wingfield was entitled. If in any estate belonging to the class of cases referred to, the amount of nánkár should, from any cause, be found to be inadequate, then the Chief Commissioner would no doubt take up such cases of hardship under the instructions which His Excellency, in approving the rules, had issued to him. The passage alluded to was as follows:—"While the Governor-General in Council "anticipates that the rules now sanctioned will work equitably for all parties, 'it is yet possible that there may be some classes of cases, not here provided 'for, in respect of which this expectation may not reasonably be fulfilled. "Should any such hereafter occur, His Excellency in Council trusts that you "will, in communication with the Táluqdárs, be able to apply a suitable "remedy in the spirit of the present arrangements; and the Governor-General "does not doubt that the Táluqdárs, who have on this occasion shown so liberal

"and conciliatory a spirit, would again in a like spirit aid you should such "contingency arise." The Settlement Officers might be trusted to bring forward any cases of hardship of the kind above indicated to the notice of the Chief Commissioner, who, acting on the views of His Excellency, would naturally represent them to the superior landholder; and if he (MR. MUIR) might judge from the fair and liberal spirit evinced by Mahárájá Mán Singh on his late visit to Simla, neither he nor his brother Táluqdárs would be backward in agreeing to an equitable and suitable redress.

The Motion was put and agreed to.

The Hon'ble MR. MUIR then requested the President to suspend the Rules for the Conduct of Business.

In making this request, MR. MUIR said that the correspondence before alluded to, including the rules now embodied in the Schedule to the Bill, were published in the *Gazette of India* in the beginning of September, that is, some six weeks ago. The provisions contained in the Schedule had therefore for a considerable time been well known both to the Council and to the public at large. He (MR. MUIR) believed that they had been well received everywhere, and especially by communications from Oudh, he understood that they had given satisfaction in that Province. No objection of any kind had been raised. Such being the case;—the measures being of local application, and sufficiently known and approved by all who were likely to give any opinion on the subject; being, moreover, the result of a kind of compromise which Government had ratified, it was of importance that the Bill should be introduced and passed at once, and that the faith of Government should thus be maintained by placing the rules beyond the doubt of any want of legal validity.

The President declared the Rules suspended.

The Hon'ble MR. MUIR then moved that the Bill be taken into consideration.

The Hon'ble MR. RIDDELL thought there was no sufficient reason for suspending the Rules. A Bill of such importance should be published in the *Gazette*, and every clause should be fully and carefully considered. Moreover, as the Bengal Regulation VII of 1822 was in force in Oudh, he did not see any necessity for the Bill; for, under the provisions of that Regulation, the Governor-General in Council and the Revenue authorities were invested with full power to determine the conditions under which persons possessed of subordinate rights in Táluqás should be allowed to obtain a sub-settlement. Section 10 of that Regulation provided that, "of several parties possessing

"separate heritable and transferable properties is any parcel of land, or in the "produce or rent thereof, such properties consisting of interests of different "kinds, it shall be competent for the Governor-General in Council to determine "and direct which of such parties shall be admitted to engage for the payment "of the Government revenue." And it is further declared that the Governor-General in Council is competent in confirming a settlement to determine and prescribe the manner and proportion in which the net rent or profit arising out of the limitation of the Government demand, shall be distributed among the different parties possessing an interest in the land or rents or produce thereof. The following, the second clause of the same Section of the Regulation, related more specially to the classes affected by the Bill; it declared in very comprehensive terms that, with the sanction of the Board of Revenue previously obtained, and subject to the orders and directions of that authority, it should be competent to the Collector to make a sub-settlement, or as it was styled, a Mofussil settlement, with any person having subordinate right in any "Talooka Zemindaree, or the like." A sub-settlement might be made, not only with persons possessing heritable and transferable property in the estate, but with those who had an hereditary right of occupancy, subject to the payment of fixed rent, or of a rent determined by a fixed principle; and it enacted that a 'pattá' should be granted to each of such under-proprietors or occupants, defining the conditions on which he should hold his land.

The recognition of a right to sub-settlements depended altogether upon Government, and the passing of the present Bill might fairly be regarded as depriving the Governor-General in Council of the power in this respect which he had hitherto possessed. Furthermore, the agreement with the Táluqdárs in which the Bill originated was two-sided, and in return for their sub-settlements, the Táluqdárs were to make certain concessions to their ryots. The Bill proposed to legalize the sub-settlements, but said nothing whatever as to the corresponding concessions. It was said that Mán Singh and other leading Táluqdárs would be sure to carry out these concessions if the Bill were passed, and he (MR. RIDDELL) had no doubt they would do so. But there were other Táluqdárs in Oudh besides Mán Singh and his associates, and he (MR. RIDDELL wished to know how *they* would be bound if the Bill were passed in its present form? To sum up his chief objections, he thought,—firstly, that the Bill was unnecessary; secondly, that, if necessary, it should be published in the usual way so that all persons concerned might have ample opportunity of considering its provisions; and thirdly, that the defect which he had pointed out should be supplied, and that clauses should be provided, either in the shape

of a separate Bill or by way of additions to the proposed enactment, binding the Táluqdárs to carry out their promises to the ryots.

The Hon'ble MR. GREY thought that the Hon'ble Mr. Riddell's objection to passing the Bill was inconsistent with his own admission that the Government was at liberty, under Regulation VII of 1822, to pass rules, in its executive capacity, respecting sub-settlements. So far, then, as under-proprietors were concerned, he (MR GREY) thought there could be no objection to the Government passing such rules in its legislative capacity. He did not understand how this could possibly, as Mr. Riddell thought, compromise the power of the Governor-General in Council. But the question was, had the Governer-General in Co uncil power to make such rules for Oudh? Did the Regulation cited by Mr. Riddell apply to that Province? The general Regulations had certainly not been extended to Oudh. However the case might be, the fact remained that some of the Revenue Officers in that Province exercising judicial powers—amongst others he might mention the Financial Commissioner—entertained grave doubts as to whether the rules regarding sub-settlements embodied in the Bill were legally valid, although they had received the sanction of the Governer General in Council. The necessity of legalizing these rules was therefore undeniable.

As to suspending the Rules, and passing the Bill at once, there could, he thought, be no reasonable objection. The Bill if passed, would merely confirm what the Government had ruled in its executive capacity, and what the Government was bound to do in fulfilment of the obligations which it had entered into with the Táluqdárs in 1858. There could be no possible use in opening a discussion which had been closed, and giving the opportunity for again raising difficulty questions which had long since been settled satisfactorily.

The Hon'ble DR. MUIR wished to add a few observations on the objections taken to the Bill by the Hon'ble Mr. Riddell. In the first place, his Hon'ble friend had urged that the Bill was unnecessary, because the powers it conferred on the Revenue Courts, were already possessed by the Governor-General in Council in his executive capacity. It did not materially affect this questien, wehther the law referred to (Regulation VII of 1822) was in force in Oude or not. He (MR. MUIR) believed that it had been introduced into Oudh by Lord Dalhousie in February 1856, along with the rest of the Revenue law then in force in the North-Western Provinces and the Punjab; and that it was still in force in Oudh, excepting in so far as it had been modified by the Táluqdárí system subsequently by due authority prescribed. But it appeared to him that his

Hon'ble friend had confounded two distinct things; namely, on the one hand, the power of Government to determine as between the Táluqdár and sub-proprietor, which of the two parties should be admitted to direct engagements with the Government; and, on the other, the power of the Courts to determine whether a sub-proprietary title existed at all. In respect of the former, the Government did undoubtedly possess the authority stated by Mr. Riddell; and it had already, in virtue of that authority, determined that, in all cases, the engagement with Government should be held by the Táluqdár in the first instance—the sub-proprietor holding on a sub-lease from the Táluqdár. But this was an entirely distinct matter from the legal power possessed by the Courts of determining, as between the Táluqdár and claimant of sub-proprietary rights, whether the latter did possess those rights. The Government had agreed that such rights would be recognized only under certain circumstances, and when a certain length of possession had been established. Now there was nothing in the law, as construed by certain of the Judicial authorities, to prevent the Courts from decreeing the sub-proprietary right on a prescription less than that laid down in the Government rule,—that is, on conditions different from those agreed to by the Government. In such event, the Táluqdárs would justly regard the stipulation as broken. It was of the first consequence to maintain the faith of Government inviolate. And for this purpose it was indispensable that the rules should be invested with the force of law.

On the second objection, that measures of such serious moment should not be finally passed without further deliberation, he (Mr. Muir) had already stated the reasons why he had proposed this step. Besides having been made public for some weeks, these measures had been the result of long and anxious deliberation. The subject involved many perplexed questions of great difficulty, and was embarrassed by pledges from time to time given by the Government to the Táluqdárs. The present arrangement afforded a solution of the difficulties, which, under the peculiar circumstances, was, he believed, the most satisfactory that could be arrived at. And as the Government had pledged itself to its fulfilment, it was of the highest importance that there should be no doubt left, for a moment longer than was necessary, as to the legal force of the rules; or that any possibility should exist of decisions being given by the Courts at variance with the principles they laid down. He therefore thought that the Council was fully justified, there being no doubt as to the equitable character of the rules themselves, in proceeding at once to remove all questions as to their legal validity.

The last objection adduced by Mr. Riddell was, that the Bill related to only one part of the arrangements lately concluded, and that if the rules for sub-proprietary rights were passed into law, so also should that portion of the rules which related to cultivating rights. As he (MR. MUIR) had been in correspondence with the Chief Commissioner on the subject, he would mention in explanation, that it was, at the present moment, only in respect of the sub-proprietary rules that immediate necessity for legislation existed. It was understood that the Courts would have no scruples in carrying into effect to the letter the rules relating to non-proprietary cultivators. No doubt legislation might eventually be found necessary in this respect also. But the subject was a large and difficult one, involving other considerations; and the Chief Commissioner was not prepared at the present time to recommend a legislative measure which should embrace all the points involved. All that was in the meantime required was to see that the arrangements agreed to on the late occasion were fully acted up to. And he (MR. MUIR) could assure his Hon'ble friend that the Chief Commissioner would carefully watch that this was the case: and if at any time it was found that the rules were in any respect not acted up to by the Courts in consequence of doubts as to their legal force, then the Chief Commissioner would lose no time in asking for the necessary sanction from the Legislature. In this respect, his Hon'ble friend might be satisfied that the honour of Government was in safe keeping in Mr. Strachey's hands.

His Excellency THE PRESIDENT observed that it had been a moot point originally, that was, after the arrangement between himself and Mr. Strachey, whether or not legislation was necessary. Some of the Members of the Council were doubtful as to the necessity, and it was decided, after discussing the matter with the Chief Commissioner, that on his return to Oudh, he should reconsider the matter in consultation with the Financial Commissioner and send the Government his final opinion on the question. Mr. Strachey accordingly returned to Oudh, and after consulting the Financial Commissioner, wrote up to say that both he and Mr. Davies concurred in thinking legislation absolutely necessary. He also expressed his desire that legislation should be limited to validating the rules which he had prepared regarding sub-settlements and other subordinate rights of property, and that the question of the rights of the ryots should be left to be solved when it arose in practice.

When Mr. Riddell objected to suspending the Rules for the Conduct of Business, and maintained that more time should be given for considering the proposed measure, His EXCELLENCY thought that Mr. Riddell forgot that the

Táluqdárs had been fully represented at the discussions which resulted in framing the measures embodied in the proposed enactment. Mán Singh and the other Táluqdárs whom the proprietors of Oudh had chosen to represent them came up to Simla with the Chief Commissioner. They were present at the discussions at which every point was gone into (HIS EXCELLENCY might say) with the utmost care, and all signified their concurrence in the rules published in the *Gazette* and embodied in the Bill now before the Council. After returning to Oudh and reconsidering the whole matter, Mán Singh and his co-representatives said that they were fully prepared to abide by the rules in the Bill. The Government proposed modifications in the rules as originally drafted by the Chief Commissioner, and these modifications were quite agreed to by the Táluqdárs. On the other hand Mán Singh and his co-representatives also proposed modifications, to which the Government likewise assented. His EXCELLENCY mentioned this to show that the matter had not been hastily transacted on the part of the Táluqdárs, but that they had fully entered into the consideration of the rules now before the Council.

As to whether Regulation VII of 1822 extended to Oudh, HIS EXCELLENCY admitted that it was a moot point; but HIS EXCELLENCY thought that the spirit of the Regulation was intended to apply to Oudh. That opinion, however, had been controverted with ability and force by Sir C. Wingfield, the late Chief Commissioner. It could not be denied that the policy adopted by Lord Canning and embodied in the Sanads granted to the Táluqdárs had had the effect of modifying the laws previously in force in Oudh.

If the rules embodied in the Bill did not expressly receive the force of law, it would be open to any Judge before whom cases arising under them should be brought cases, HIS EXCELLENCY might observe, which were very intricate and often bitterly contested by rival interests—to consider whether all or any of these rules were or were not legal. This would doubtless result in conflicting decisions—a great evil—for it might lead the people of Oudh to think that the intentions of the Government had been insincere. It was hard for an ignorant population to distinguish between the acts of an officer in his judicial and his fiscal capacity, and the mere suspicion, however unreasonable, that a breach of faith had been committed or was intended by the Government was a serious evil, and one which doubtless had influenced Mr. Strachey and Mr. Davies in recommending that the Bill should be passed.

On the whole, therefore, HIS EXCELLENCY thought it better that the question as to sub-settlements should be decided legislatively. As to legislating at

present with respect to the rights of occupying tenants, HIS EXCELLENCY thought that the answer of Mr. Muir was conclusive. The Government believed that the Táluqdárs would act in good faith towards the ryots, and if any difficulty should arise, we could then resort to legislation. The great argument in favour of the Táluqdárs was that, although they had always denied the existence of rights of occupancy in Oudh, and though their Sanads were silent as to such rights, they were willing to grant certain privileges to the class of ancient proprietors of the soil who, although they had lost all proprietary right, still occupied as cultivators land in their ancestral villages. The ready assent which the Táluqdárs had given to the proposed measures as to the sub-settlement also justified the expectation that they would carry out in its entirety the scheme now proposed to be legalized.

The Hon'ble MR MAINE said that, on the technical point, he agreed with Mr. Riddell that the Bill was not necessary. But when any doubt arose whether a particular measure required legislation, or was within the competence of the executive, it was the invariable practice (he might appeal to his Right Hon'ble friend Mr. Massey as to the practice in the House of Commons) to give the preference to legislation. In the present instance, the Bill was intended to set at rest certain not very substantial doubts which had been raised respecting the executive capacity of the Governor-General in Council.

The Hon'ble MR. RIDDELL desired to say that the arguments used in the course of the discussion had altogether removed his objections to the immediate passing of the Bill.

The Motion was put and agreed to.

The Hon'ble MR. MAINE moved as amendments that the word "administration" should be substituted for the word "Government" in the preamble and in Section 1, and that the word "is" should be substitued for "shall be" in Section 2, line 3. The latter amendment would improve the wording of the Section. The former was rendered necessary by the fact that the Local Government of Oudh was the Governor-General in Council—the Chief Commissioner being only charged with the administration of that Province.

The Motion was put and agreed to.

The Hon'ble MR. MUIR then moved thar the Bill as amended be passed.

The Motion was put and agreed to.

TRUSTEES AND MORTGAGEES' POWERS' BILL.
MORTGAGEES AND TRUSTEES' PROPERTY BILL.
COURTS OF REQUESTS' (STRAITS' SETTLEMENT) BILL.

The Hon'ble MR. MAINE presented the Report of the Select Committee on the Bill to give to Trustees, Mortgagees and others, in cases to which English law is applicable, certain powers now commonly inserted in Settlements, Mortgages and Wills, and to amend the law of property and relieve Trustees.

He also presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to the conveyance and transfer of property in British India vested in Mortgagees and Trustees, in cases to which English law is applicable.

He also presented the Report of the Select Committee on the Bill to enlarge the jurisdiction of the Courts of Requests in the Settlement of Prince of Wales' Island, Singapore and Malacca.

STRAITS' SETTLEMENT ÁBKÁRÍ BILL.

The Right Hon'ble MR. MASSEY in introducing the Bill for amending the laws for collecting a Revenue of Excise on Spirituous Liquors and Intoxicating Drugs in the Settlement of Prince of Wales' Island, Singapore and Malacca, said, that this Bill repealed the existing Ábkárí Law in the Straits' Settlement, which had been found ineffective for the purposes of revenue, but substantially re-enacted that law with the amendments which experience had shown to be necessary. No new taxation was proposed, and no question of policy was involved. The Bill was introduced at the instance of the Local Government by whom it had been carefully framed. The Statement of Objects and Reasons which had been published thrice in the *Gazette*, showed with considerable minuteness the changes in the law which the Bill if enacted would effect. It was therefore not necessary to enter into the details of the proposed measure, nor, under the circumstances, did he desire to refer it to a Select Committee. Since the publication of the Bill, an Act had been passed by the British Parliament removing the Straits' Settlement from the Government of India. But the transfer was not to come into operation until the 1st of January 1867. The legislative powers of the Council would therefore remain in force as to the Settlement down to the end of the present year; and as the Local Government was anxious that the Bill should become law as soon as possible, he proposed that the Bill should be passed on the next day of meeting.

The Council then adjourned to the 24th October 1866.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Dept. (Legislative.)

SIMLA,
The 10th October 1866.

Government of India Central Printing Office No.—5 L. D.—15-6 1900.—30.—J. S. Nicholas.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Simla on Wednesday, the 24th of October 1866.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*
His Excellency the Commander-in-Chief.
The Hon'ble H. S. Maine.
The Hon'ble W. Grey.
The Hon'ble G. N. Taylor
The Right Hon'ble W. N. Massey.
The Hon'ble Colonel H. M. Durand, C.B.
The Hon'ble W. Muir
The Hon'ble H. P. Riddell.

MORTGAGES AND TRUSTEES' PROPERTY BILL

The Hon'ble MR. MAINE, in moving that the Report of the Select Committee on the Bill to consolidate and amend the law relating to the conveyance and transfer of property in British India vested in Mortgagees and Trustees, in cases to which English law is applicable, be taken into consideration, said that he had explained on a former occasion that the Bill was purely technical in its character; that it only referred to cases in which English law was applicable; that it was founded on English Acts which had been framed by a most competent draftsman, the present Lord Justice Turner, and that the Judges of the High Courts thought the Bill wanted. Under these circumstances he would have asked the Council to pass the Bill summarily, but that, since its publication in the *Gazette*, the Indian Succession Act had come into operation and necessitated the changes which he would proceed to notice briefly. The chief object of the Bill might shortly be described as being to meet the difficulties arising from the devolution of the fiduciary interest in property, under the laws relating to intestate and testamentary succession, on a person other than the trustee contemplated by the creator of the trust. These difficulties were formerly in India, and still in England, aggravated by the circumstances that the devolution of personalty or moveables was different from that of realty or immoveable property. This distinction had happily been abolished in India by the Indian Succession Act;

but the provisions of that Act did not apply to any will made, nor to any intestacy occurring, before the 1st January 1866. It was therefore necessary to make the Bill (which had been framed, it would be remembered, before the passing of that Act) apply to two states of circumstances,—cases where trustees held under wills made or intestacies occurring before the 1st January, and cases where they held under wills made or intestacies occurring on or after that day. The interpretation clause of the Bill, as amended by the Select Committee, accordingly contained the following provisions:—

"In the case of a will made or an intestacy occurring before the 1st day of January 1866, 'heir' shall mean the person claiming an interest in the immoveable property of a deceased person under the laws concerning descent applicable to such property: and 'devisee' shall, in addition to its ordinary signification, mean the heir of a devisee and the devisee of an heir, and generally any person claiming an interest in the immoveable property of a deceased person, not as heir of such deceased person, but by a title dependent solely upon the operation of the laws concerning devise and descent.

"In the case of a will made or an intestacy occurring on or after the 1st day of January 1866, 'heir' shall mean any person claiming an interest in the immoveable property of a deceased person under the rules for the distribution of an intestate's estate; and 'devisee' shall mean any person taking immoveable property under a bequest, and any person, other than an executor or administrator, claiming an interest in immoveable property, not as entitled thereto under the said rules, but by a title dependent solely upon the operation of the laws concerning intestate and testamentary succession."

Although the Committee had retained the terms "heir" and "devisee" as being properly applicable to persons claiming immoveable property under intestacies occurring or wills made before the 1st January 1866, the phraseology of the Bill had, in other respects, been made to harmonize with that of the Indian Succession Act. "Hold" and "holding," for example, had been substituted for the technical expressions "seized" and "possessed," and "immoveable property" for "land" "real property." The definition of stock had been altered so as to make it comprise shares in ships registered under the Merchant Shipping Act, 1854, or at any port of British India. This was in accordance with the Statute 18 and 19 Vic., cap. 91, Section 10. The definition of "High Court" had been altered so as to make the Bill apply, not only to the High Courts at the three Presidency towns, but also to the High Court of the North-Western Provinces, and to the Chief Court of the Punjab.

MR. MAINE added that he assumed that, after the 1st January 1866, conveyances of immoveables in trust had been and would always be made, not to trustees and their heirs, but to trustees and their executors or administrators; and the difficulties connected with the devolution of the trust property would from the nature of the case be practically simplified.

The Motion was put and agreed to.

The Hon'ble MR. MAINE then said that, since the Select Committee had made their report, a communication had been received from the Local Government requesting that the provisions of the Bill should be made applicable to the Straits' Settlement. He would therefore, with the permission of his Excellency, move the following amendments:—

That the following words be inserted in Section 1 after line 9:—" and so much of Act No. XIV of 1852 (for extending the provisions of Acts XXIV of 1841 and XVII of 1843 to the Straits' Settlement) as extends the provisions of the said Section to the Settlement of Prince of Wales' Island, Singapore and Malacca;" that the word " are " be substituted for " is " in line 10 of the said Section; and that the words " or Act " be inserted after " Section " in lines 11 and 13;

That the following Section be added to the Bill:—

" 55. On and after the first day of February 1867 (but not till then), the powers and authorities given by this Act to the High Courts, shall and may be exercised by the Court of Judicature of the Settlement of Prince of Wales' Island, Singapore and Malacca, with respect to moveable and immoveable property within the local limits of the jurisdiction of that Court; and, in the said Settlement, Section 2 of this Act shall be read as if the words and figures '1st day of February 1867' were substituted for the words and figures '1st day of January 1866.' "

The 1st day of February 1867 was mentioned in the Section which MR. MAINE proposed to add, as that was the day on which it was intended that the Indian Succession Act should come into force in the Straits' Settlement.

The Motion was put and agreed to.

The Hon'ble MR. MAINE then moved that the Bill as amended by the Select Committee, with the additional amendments now approved, be passed.

The Motion was put and agreed to.

TRUSTEES AND MORTGAGEES' POWERS BILL.

The Hon'ble MR. MAINE, in moving that the Report of the Select Committee on the Bill to give to Trustees, Mortgagees and others, in cases to which English law is applicable, certain powers now commonly inserted in Settlements, Mortgages and Wills, and to amend the law of property and relieve Trustees, be taken into consideration, said that this Bill, like that which had just been passed, was of a technical character. It would only apply to cases to which English law was applicable, and it had been framed on the basis of the useful Statutes known as Lord St. Leonards' Acts. The changes recommended by the Select Committee in their report, were directed to supply certain defects which had been observed in the English Statutes.

Section 5 of the Bill, as introduced, provided that monies arising from sales by Trustees, should be laid out in the manner indicated in the instrument containing the power of sale, and that, until the money was so laid out, it should be invested in Government Securities. The Committee proposed to provide further that, if the instrument contained no such indication, the Trustees should invest the money in the same way, and pay the interest to the persons to whom the rents of the property sold would have been payable if the sale had not been made.

The Committee had also provided that nothing contained in Section 10 should be construed to authorize the mortgagee of a term of years to sell and convey the fee simple of the property in cases where the mortgagor could have disposed of the fee simple at the date of the mortgage. This would preclude the power unintentionally given by the Statute 23 and 24 Vic., cap. 145, Section 15, from which Section 10 of the Bill, as introduced, had been transcribed.

In Section 34 the Committee had provided for the case of all Trustees retiring simultaneously, and also for that of there being two or more classes of Trustees of the same instrument. These were *casus omissi* in the Bill as introduced, and also in the corresponding Section of the Statute 23 and 24 Vic., cap. 145.

The Committee had retained Section 42, which referred to the distribution of the assets of a testator or intestate, after a notice given by his executor or administrator. This retention would preclude the doubts which were understood to have arisen with regard to the application of the corresponding Section (320) of the Indian Succession Act, 1865.

The Bill had been made to extend not only to the High Courts in Calcutta, Madras and Bombay, but also to the High Court of the North-Western Provinces, and the Chief Court of the Punjab.

The Motion was put and agreed to.

The Hon'ble COLONEL DURAND asked whether there would be any doubt as to the precise meaning of the expression "Government Securities" as used in Section 5 of the Bill.

The Hon'ble MR. MAINE did not think it likely that any such doubt would be raised. "Government Securities" was a phrase of frequent use in Indian legislation—see, for example, Section 7 of Act VIII of 1855—and meant Government Promissory Notes, for the payment of which the credit of the Government was pledged. It would certainly not include shares in the Banks of Bengal, Madras and Bombay.

The Hon'ble MR. MAINE then said that, since he had presented the Report of the Select Committee, the Local Government had asked that this Bill also should be made applicable to the Straits' Settlement. He would therefore, with his Excellency's permission, move the following amendments :—

That in Section 1 the following words be added to the definition of High Court :—" and the Court of Judicature of the Settlement of Prince of Wales' Island, Singapore and Malacca."

That the following Sections be added to the Bill :—

"46. This Act may be called The Trustees and Mortgagees' Powers Act, 1866.

"47. On and after the first day of February 1867, but not till then, this Act shall apply to the Settlement of Prince of Wales' Island, Singapore and Malacca; and, in the said Settlement, Section 29 of this Act shall be read as if the words and figures 'first day of February 1867' were substituted for the words and figures 'first day of January 1866.'"

The Motion was put and agreed to.

The Hon'ble MR. MAINE moved that the Bill as amended by the Select Committee, with the additional amendments now approved, be passed.

The Motion was put and agreed to.

STRAITS' SETTLEMENT COURTS OF REQUESTS' BILL.

The Hon'ble MR. MAINE, in moving that the Report of the Select Committee on the Bill to enlarge the jurisdiction of the Courts of Requests in the Settlement of Prince of Wales' Island, Singapore and Malacca, be taken into consideration, said that he would ask the Council to pass the Bill on the authority of the Local Government by whom it had been framed, and at whose request it had been introduced. The Code of Civil Procedure did not extend to that Settlement, and the procedure set forth in the Bill was different from any in force in England, and very different from that with which they were familiar in India. The only question was as to whether the Council would adopt the recommendation of the Select Committee and enlarge the jurisdiction of the Courts of Requests from 32 to 50 dollars. The Bill, as introduced, proposed to extend the jurisdiction to suits in which the matter in dispute did not exceed the value of 100 dollars; but the Local Government had lately represented that the necessity for extending the jurisdiction of these Courts to suits in which the matter in dispute might exceed the value of 50 dollars had ceased to exist. The requisite alterations had consequently, with the assent of the Governor of the Straits' Settlement, been made in the wording of the different Sections of the Bill. Fifty dollars were 100 Rupees; and as the Indian Small Cause Courts, with which the Courts of Requests in the Straits most nearly corresponded, had jurisdiction to a much higher amount, he thought that the Council could have no objection to adopt the recommendation of the Committee.

The Motion was put and agreed to.

The Hon'ble MR. MAINE then moved that the Bill as amended be passed.

The Motion was put and agreed to.

STRAITS' SETTLEMENT ABKARI BILL.

The Right Hon'ble MR. MASSEY, in moving that the Bill for amending the laws for collecting a Revenue of Excise on Spirituous Liquors and Intoxicating Drugs in the Settlement of Prince of Wales' Island, Singapore and Malacca, be taken into consideration, said that on the last day of meeting he had explained the objects of the Bill, and the circumstances under which it was introduced. No objection had been made to the changes in the law which the Bill, if enacted, would effect—changes, he might repeat, which had been set forth with much minuteness in the Statement of Objects and Reasons. He therefore thought it unnecessary to trouble the Council with any further observations.

The Motion was put and agreed to.

The Hon'ble MR. MAINE moved as an amendment that the following sentence be added to Section 1 of the Bill :—

"Section 53 of Act No. XIII of 1856 (for regulating the Police of the Towns of Calcutta, Madras and Bombay, and the several Stations of the Settlement of Prince of Wales' Island, Singapore and Malacca), shall be read as if the reference therein made to the said Act No. XIV of 1851 were made to this Act."

This amendment was necessary, as the Bill proposed to repeal Act No. XIV of 1851, the present Straits' Settlement Abkari Act.

The Motion was put and agreed to.

The Right Hon'ble MR. MASSEY then moved that the Bill as amended be passed.

The Motion was put and agreed to.

The Council then adjourned.

WHITLEY STOKES,

Asst. Secretary to the Govt. of India,
Home Dept. (Legislative).

SIMLA,
The 24th October, 1866.

S. G. P. I.—No. 77 L. D.—31-5-11.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 14th December 1866.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Honour the Lieutenant-Governor of Bengal.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble G. Noble Taylor.
The Hon'ble Colonel H. M. Durand, C. B.
The Hon'ble H. P. Riddell.
The Hon'ble J. E. L. Brandreth.
The Hon'ble M. J. M. Shaw Stewart.
The Hon'ble C. P. Hobhouse.
The Hon'ble J. Skinner.
The Hon'ble D. Cowie.

The Hon'ble MR. BRANDRETH, the Hon'ble MR. SHAW STEWART, the Hon'ble MR. HOBHOUSE, the Hon'ble MR. SKINNER, and the Hon'ble MR. COWIE took the oath of allegiance, and the oath that they would faithfully discharge the duties of their office.

INDIAN PENAL CODE EXTENSION (STRAITS' SETTLEMENT) BILL. INDIAN SUCCESSION ACT, 1865, EXTENSION (STRAITS' SETTLEMENT) BILL.

The Hon'ble MR. MAINE introduced the Bill to extend the Indian Penal Code to the Straits' Settlement, and moved that it be referred to a Select Committee, with instructions to report in a fortnight.

He also introduced the Bill to extend the Indian Succession Act, 1865, to the Straits' Settlement, and moved that it be referred to a Select Committee, with instructions to report in a fortnight.

He said that they were two of a series of legislative measures pressed on the Council by the Government of the Straits' Settlement. Two of these measures had been passed by the Council during some formal sittings at Simla, but the present Bills were of too important a character to be passed elsewhere than at Calcutta, though it was possible he might have at some future stage to pass them summarily under a suspension of the Rules for the Conduct of Business. It was not improbable that some further legislative proposals would come from the Straits' Settlement before the sittings ended, and that the Council might be asked to proceed with them at some speed. Under these circumstances, he thought it proper to explain to the Council how these proposals came on them so suddenly, and why it might be necessary to deal with them in an exceptional manner. He must state that very little of Indian legislation had been extended to the Straits, and none of the greater enactments. It was not to be denied that there had been, for long, much repugnance in the Straits' Settlement to its being brought under Indian law. How far the feeling was shared by the general community, he could not say; but if it was so shared, he should be disposed to attribute it to that impression of a diversity of interests which had caused the separation of the Settlement from the rest of the Indian Empire. At all events the Judges and the legal profession were unquestionably opposed to the extension of Indian legislation to the Settlement, and the Local Government constantly protested against its inclusion. Thus it resulted that, in the former Legislative Council, the Straits were as a matter of course exempted from the operation of Indian Statutes. More recently, there appeared to have been a change of feeling, and complaints had been received that the Straits were deprived of the benefits of Indian legislation. In this state of things, a section was added to recent enactments, empowering the Governor of the Straits' Settlement to extend their provisions to the territory under his jurisdiction, though, owing to the non-extension of the Codes of Civil and Criminal Procedure, the judicial and administrative system of the Straits differed so widely from that of India, that the Council could not take upon itself to describe those Courts and Officers by whom the powers given were to be exercised. Still more recently the negotiation between the India and Colonial Offices for the separation of the Straits from India had come to a successful issue, and an Act of Parliament had been passed during the last Session under which the Queen was enabled, by an Order in Council, to declare the time at which the Settlement would become independent. No sooner was this result known than we received from the Straits' Government a series of urgent requests that the Settlement should not be allowed to separate until a large part of Indian legislation had been extended to it. In particular, it was asked that the Penal

Code and the Succession Act, which was the first part of the Civil Code, should be made applicable to the Straits. It seemed to him likely that further requests of the same nature would be received.

The Council would probably agree with him that this change of feeling was not a little remarkable ; and as this was the first Meeting of the Council; he would propose to contrast the spirit of these applications with that of some criticisms contained in a paper which had possibly been circulated, and which it would be his duty to notice sooner or later. One of the Judges of the High Court of Madras, with whom he had not the advantage of personal acquaintance, but who was reputed to unite the best characteristics of the Barrister and Civilian elements of those tribunals, had remarked as follows on a proposal to extend certain formalities prescribed by the Succession Act to the execution of Wills by Muhammadans and Hindús :—

> In conclusion, I have to express the great reluctance with which I furnish an opinion favouring further legislation. I regard the rapidity with which legislation is now proceeding as a very great evil. If it continues, I do not think that either Judges or practitioners, and still less the public, will know from day to day the law which governs them. Statutes, unless very carefully constructed, do not afford certainty, but doubt ; and litigation is not repressed, but aggravated, by every fresh enactment.

Now it would perhaps be sufficient to contrast this passage with the implied criticism of the Judges and Government of the Straits' Settlement. It was not unfair to say that the Settlement wished to retain nothing of India except Indian legislation ; but a further reply than that was necessary. If Mr. Holloway's opinion had stood by itself, MR. MAINE would probably not have noticed it, for the truth was that learned lawyers were the natural enemies of legislation, which impaired the completeness and symmetry of their knowledge. But the same feeling had been exhibited in other quarters ; and MR. MAINE thought he could not too soon meet the charge of precipitate and excessive legislation on the part of that Council. He did not deny that when the annual Statute-book was looked at by itself, it might be observed with surprise or dismay that the annual production of laws was about thirty. But no just conclusion could be reached unless there were a further examination as to the classes of enactments which the book comprised, and the proportion which one class bore to another. MR. MAINE would divide the Acts of the Indian Legislature into four classes—a division only rough but practically sufficient.

The first of these classes was one of serious importance, and it was probably from vague associations with it that people had begun

to speak of dangerous over-legislation. This class consisted of enactments affecting the civil usages or religious opinions of the people of the country. There could hardly be any censure too heavy for the Council if it really did pass such measures with incaution and precipitancy. He did not acquiesce in that interpretation which had been sometimes put on the proclamation issued by the Queen on assuming the direct Government of the country, and which apparently pledged Her Majesty to surrender the power which was the sole moral justification for our being in the country at all—power to improve its institutions—but he fully admitted that it would be the worst policy to pass measures of this class without the maturest consideration and the most scrupulous regard for the feelings of the people. But how did the facts really stand? Since MR. MAINE had been in India, that was four years, he could only remember two measures which could distantly be described as disturbing or affecting Native custom or Native religious opinion. One was the Native Christian Marriage Dissolution Act passed last Session, the other was the Registration Act. The latter was much more serious than the former, inasmuch as it added a formality to the majority of civil transactions, penetrating into every corner of Native life. He was not going to defend those measures, but he wished to call attention to the duration of the discussion on them. Proposals for registration had been before the Government for thirty-six years, and the Bill itself for six and a half years before the Council. Again, the principle of the Converts' Dissolution of Marriage Act had probably been discussed ever since there had been Missionaries in India. But the proposal ultimately adopted was under active discussion for thirty-two years, and the Bill itself was two years under the consideration of the Legislature. He would mention one other enactment which might possibly be supposed to come under the class as affecting a portion of the community not numerically large, but of great importance. This was the Act erroneously called the Act for abolishing Grand Juries, but more properly entitled an Act for enabling Europeans to be tried elsewhere than in the Presidency towns. It was founded on a Report of the Indian Law Commissioners, dated in 1853, and the Bill passed in 1865, so that the subject had been twelve years under discussion. In admitting, therefore, that the Council would be censurable if it passed enactments of this class with the fullest deliberation, he was bound to state what the facts were, that the class consisted of only three measures discussed during an average period of four and twenty years.

The second of the classes into which he divided Indian legislation was intended to bring up law which was common to England and India to the

pitch of improvement which it had reached at home. He could remember but four enactments of the sort passed of late years. The two Trustee Acts recently passed at Simla, the Mercantile Law Amendment Act, and the Indian Companies' Act. Nobody, he supposed, would charge the English Parliament with precipitate legislation, and certainly the immediate framers of the two Acts first mentioned—Lord St. Leonards, and Lord Justice Turner—could not be accused of feverish zeal for reform. The truth was that the Indian Legislature had, in enactments of this class, lagged far behind the English Parliament, and one measure in particular—The Indian Companies' Act—had barely been passed in time, as recent occurrences in Bombay had abundantly proved.

MR. MAINE now appoached the third class—of an importance which it was hardly possible to over-estimate—the Codes. Three of them were passed by the former Legislative Council—the Penal Code and the Codes of Civil and Criminal Procedure. This Council had as yet passed but one single chapter of the fourth Code—the Succession Act—but he might mention that one enactment—the Partnership Amendment Act—was in reality part of the Civil Code. MR. MAINE had stated at the time, that the law was in anticipation of the Code, and this was proved, for the Act was embodied in the Draft Code of the Law of Contracts which the Indian Law Commission had just sent out. The responsibility for the Codes was shared between this Council and the Indian Law Commissioners. The Commissioners sent out the first draft, and, in the case at all events of the Indian Civil Code, it had been accepted by the Council with but slight alteration. He wished, however, not to put off the responsibility on other persons, but to meet the objection that the Codes added to the law and rendered it unintellgible to the people. MR. MAINE ventured to lay down exactly the opposite proposition; the Codes enormously reduced the bulk of the law, and rendered it for the first time intelligible to the people. He would not enter into the general question of codification. His own observation showed him that the vulgar prejudice against codification had greatly decayed in England, and had given way to deep regret that the characteristics of English law were such as to render it if not impossible, at all events enormously difficult to reduce it to a Code. But the question for the Council was, how far had the Indian Codes rendered law unintelligible or bulky in India? MR. MAINE did not himself recollect the state of the law in India before the three Codes which were already law. But there were gentlemen in the Council who perhaps had administered that law either as Judges or as Magistrates. He should be surprised if they did not bear out his impression, which of course rested on hearsay, that nothing could exceed its uncertainty,

confusion, and intricacy. It was true that the Codes of the Non-Regulation Provinces, which were descended from the Panjáb Code, were greatly simpler. But being clothed in half-popular language, they had a natural tendency to become overlaid with glosses and interpretations. When the last of them, the Civil Procedure of the Panjáb, was superseded the other day by the Code, it was not too much to say that it consisted of a mountain of Circulars. But now, looking to the Civil Code, with which alone the Council was concerned, would it, by passing the Chapters of the Code at the rate of about one in two years, lay itself open to the imputation of increasing the massiveness or the unintelligibility of the law? What was the Civil law of India at this moment, apart from the religious law, which included the law of intestate succession, and which the Code did not propose to touch, and apart from the law of land, which stood on a footing of its own? It consisted, in the first place, of Native usages, which differed not only from province to province, but from district to district, and from family to family. It consisted, further, of the writings of Hindú and Muhammadan jurists, so vague from the confusion of ethical with legal rules, that it was hardly possible to extract a trustworthy conclusion, or, what was worse, that it was possible to extract two conflicting conclusions, each equally trustworthy with the other. There were, further, the old Regulations, which were certainly not remarkable for precision of language, and there were, further, a few principles—few, that was to say, as compared with the whole mass of legal principles—decided by the late Supreme and Sudder Courts, and by the Privy Council. There were great chapters of law on which, in India, there was no indigenous system of rules of any sort. Contract, for example, was utterly unregulated, except by some small portion of Muhammadan jurisprudence. Now, was that state of things satisfactory? No doubt, the answer of some persons would be that if the people were contented, it was no business of the Government or the Council. But the truth was there was an influence in India which tended to simplify this confusion. That was the influence of English law, not as modified by the Codes, but of English law pure and simple. It was all very well in theory to say that an Indian Mofussil Judge decided by Native usage, "equity and good conscience"; but in practice, if he did anything of the kind, his reputation would suffer. The Court which revised his decision would insist upon his applying a stricter rule than could be got out of equity and good conscience, and the rule applied would be one mediately or immediately derived from Englsh law. Now, was that a process which an English Government, conscious of its own responsibilities, could allow to go on without check? Mr. Maine was not likely to say any evil of English law;

but it was certainly one of the most difficult systems of law in the world, and its compass was enormous. Its *corpus juris* was a law-library of a thousand volumes. How many law-libraries were there in India? Probably twenty at the outside. But could there be conceived a more intolerable hardship than that 150 millions of people should have their civil rights dependent on a system contained in records which were inaccessible to them, which they could not translate, and which, if they could translate, they could not understand. Some persons answered that this was immaterial so long as there was a learned profession competent to expound the law, and urged that in England no one except a professional man understood the law, or would act without the advice of legal practitioners. That was true, but it was a peculiarity of England, and not an honourable one, and not one which Englishmen should carry all over the world with them. At the same time, in England there was a legal profession spread over the country, from whom a trustworthy opinion could always be obtained. But how many persons were there in India who, considering the invasion of the country by English law, could give such an opinion? Probably outside the Presidency towns, they could be counted on one's fingers. It seemed to him, therefore, a matter of simple duty to the people that the labours of the Indian Law Commissioners should proceed. The only possible remedy for the state of things he had described was a Code which, without going over much into detail, should set forth fundamental principles with as much simplicity as was compatible with accuracy. Such a Code would perfectly well fit in with Native usage when it was wholesome; nor was there any fear that English law, characterised as it was by good sense aud logical coherence, would fail to supply the greatest part of the material.

The fourth and last class was the most numerous of all. Probably it was by not noticing the proportion which this class bore to the rest of the enactments that people had obtained the impression of excessive legislation. It would have to be remembered that this Council was not simply the Imperial Legislature, but the Local Legislature for all Provinces which had not got Councils of their own. From Lower Bengal, Madras and Bombay, there were hardly any applications for legislation at all. The few Bills that came from those Provinces were necessitated by a technical difficulty, namely, that by the Letters Patent of the High Courts, the Local Councils were prohibited from interfering with the jurisdiction of those tribunals. But from those Provinces which had no Legislatures of their own, there was a constant stream of applications for legislative enactments. Now, what was the character of those enactments? They were merely Local Bills.

They did not create rights or obligations. They merely affected the machinery by which rights were protected or declared. They simply carried out small judicial or administrative impovements. The fact was that the country was passing from an administrative to a legal condition, from a state in which good government depended on the energy of individuals, into a state in which it depended on adherence to well considered rules. There were some, MR. MAINE knew, who looked on the process as wholly evil. The further you got from Calcutta, the more you heard the complaint that law was paralysing administration. All that could be said in reply was that the change was inevitable. Energetic administration in the ruder provinces produced wealth, security, and comfort, and the infallible result was a wish to have rights of enjoying property regulated by fixed law, and a disinclination to allow those rights to vary with the varying theories of successive administrators. MR. MAINE thought he understood what was meant by the assertion that law paralysed administration. But certainly the last person to object to the suits of the change should be a Judge of a High Court, because the moving cause was undoubtedly a growing taste for legality, fostered, probably, by the strengthening of the higher tribunals and particularly of the High Courts. There were examples of the change and of the demand which it had produced in the legislation submitted to the Council. There was an example in the Hon'ble Mr. Brandreth's Bill for establishing Municipal Committees in the Panjáb. There was a practice existing which the Local Government held to be healthy, useful, and convenient. Suddenly some ingenious person discovered that it rested on no legal foundation. Thereupon the Local Government came to the Council for a Bill to legalize it. Or take the converse case, in the Bill for the suppression of gambling, of which the Hon'ble Mr. Riddell was in charge. The Local Government had had its attention drawn to the prevalence of public gambling in large cities as productive of all evil. Now, did any body suppose that, thirty years ago, if a person in the position of the Lieutenant Governor of the North-Western Provinces or the Chief Commissioner of British Burmah had made up his mind that public gambling was productive of crime, he would have come for a Bill to this Council? Why, he would have told his police to put it down, or issued his orders to the District Officer. But now-a-days, quite reasonably and properly, he came to us for a Bill. These Bills, providing for small judicial or administrative changes, were and must be constantly required. When such a measure was strongly recommended by the Local Government, MR. MAINE held that this Council would be heavily responsible if it declined legislation. At all events the executive Government would be censurable if it did not submit to the Council a Bill to legalize the change. It would be the

merest pedantry to stereotype legislation of this sort. In a country in which those who knew most of a people knew little of them, our system of government must necessarily be tentative, and small administrative improvements must be from time to time required and conceded. If it were true that there was too superstitious a regard for legality, the proper remedy was an active legislation. For these reasons MR. MAINE considered that this class of local Bills could never fall off very much in number, and it was further inevitable that they should constantly take the form of Bills amending Bills, not because the hand or mind of the legislator was uncertain, but because the material of policy upon which he worked was from its very nature shifting. MR. MAINE hoped that every Bill submitted to the Council at these sittings would be found not only justifiable but incapable of postponement. He himself would be personally glad if the spell of an annual sitting, except for financial measures, could be broken; but he trusted it would be seen that no one of the measures now proposed for consideration could have been put aside or delayed without injury to good government.

As regarded the particular Bills before the Council, the first of them merely proposed to extend the Penal Code to the Straits. A short Bill, separately before the Council, provided for certain consequences arising from the definition of the word "offence" in the Penal Code. That Bill had been embodied in the second Section of this measure. Some papers had come in, which suggested still further change in the same direction, but he trusted the discussion on these points would be taken on the separate Bill, and not on the measure now submitted.

As regarded the Bill to extend the Succession Act to the Straits' Settlement, it was another of the class of Bills which had been asked for by the Local Government. The Bill proposed to extend the Act, but with two important modifications. Here in India the operation of the Act was excluded in the case of the Hindús, Muhammadans and Buddhists: the result was that it affected a comparatively small class of the community, and its great importance was the indirect effect that it would be sure to have on the Native law of succession. The Local Government wished the Act to be made the *lex loci*, without distinction of race or creed; but the Straits' Settlement was a community of an omnigenous character, and if the Succession Act was to be applied, provision would have to be made for two matters. First, as in the case of many primitive races, a part of the population practised adoption. The Bill accordingly provided that, for the purpose of intestate and testamentary succession, an adopted son

should be considered a legitimate child of his adoptive and not of his natural father. The provision was so far in accordance with the Hindú law, but omitted the inequitable rule, that in case of a son being born to the adoptive father subsequently to the adoption, the share of the adopted son should be only one-fourth of that of the natural-born son. Secondly, there were many persons in the Straits whose marriage-law permitted a plurality of wives. It would be absurd to apply to such persons the rule that marriage should operate as a revocation of a will. The Bill accordingly provided that, in the case of a polygamist, his will should not be revoked merely by his marriage. Provision was also made for the case of his dying intestate and leaving several widows.

The Motions were severally put and agreed to.

PANJÁB MUNICIPAL BILL.

The Hon'ble MR. BRANDRETH, in moving for leave to introduce a Bill to provide for the appointment and maintenance of Municipal Committees in the Panjáb, said that the effect of the Bill in most towns would be to give a legal status to the municipal committees which had already been appointed. During the earlier years of our possession of the Panjáb, and until within a very short period, the district officer alone initiated and carried out all plans for the conservancy and the improvement of towns. The head quarters' town was generally well cared for; but the more distant places did not receive so much of his attention. Therefore it was that the late Lieutenant Governor of the Panjáb, Sir Robert Montgomery, about three or four years ago, determined on introducing municipal committees in almost all the principal inhabited places in the Panjáb. He wished to give the people a more direct interest in matters that so nearly concerned them as the cleanliness and improvement of the places where they were passing their lives, than they could have felt under the former system. He directed that these committees should be appointed by the people themselves. MR. BRANDRETH thought there could be no question that these measures had been attended with considerable success. Useful tanks and wells had been dug; efficient conservancy establishments had been entertained, and very many important improvements had been effected. To some towns he could point, in which river-encroachments had been prevented, swamps drained, and the safety and health of the towns entirely secured by the measures taken by the local committees. The municipal funds were raised by town-dues, fixed at such rates and levied on such commodities as the committees decided. These municipal committees had, however, no legally recognized existence. The taxes they levied, they had no legal right to levy. The townspeople had hitherto paid them in consequence of the good under-

standing subsisting between them and their committees; and with regard to the few defaulters who had been brought into Court, though it was probably owing to their ignorance, he had never heard of their ever having pleaded that the arrears demanded of them were not legally due. But it could not be expected that this patriarchal state of things should last. The Lieutenant Governor had applied for legislation on the subject, and he (MR. BRANDRETH) thought that he had been well advised in so doing. There was no question that some law ought to be passed. The Civil Procedure Code had recently been introduced into the Panjáb. It would be followed by a whole army of pleaders, whether for good or for evil to the country, remained to be seen. There was no doubt, however, that they would advise defaulters to resist all taxes not clearly in accordance with the law.

The Bill which he proposed would be a short one. It would contain but few rules; it would rather prescribe certain limits within which the Lieutenant Governor might lay down all necessary rules for the efficient working of the existing municipal committees in the Panjáb. MR. BRANDRETH thought there could be no doubt that the Lieutenant Governor ought to have an almost exclusive control over these committees. The Bill would also provide for the continuance of the town-dues, but only where the consent of the people was obtained, where the majority of the inhabitants of all classes were shown clearly to wish for town-duties in preference to either a house or personal assessment, which where the only other modes of assessment that could conveniently be recommended.

He was aware that considerable objections might be urged to these town-duties. It was certain that the course of trade was inconvenienced by them to an appreciable extent, and he knew of some places in which taxes had been introduced without the consent of the people. But this mode of taxation had been in existence for several years. It was on the whole popular with the people, and he should regret very much to see it put a stop to by law.

He had looked at two important Acts passed for the improvement of towns in Madras and Bengal; but he did not think it advisable to apply the elaborate provisions of those Acts to the Panjáb, as they might only lead to misunderstanding among the people. Where there was a European element and European ideas on the subject of self-government, a committee would no doubt feel a strong objection to the power of minute control with which it was proposed to invest the Government by this Bill, but these committees had no

such feeling, and would probably be all the better pleased, on account of the interest the Government would manifest in their affairs by its interference.

The Bill that he proposed was based mainly on the suggestions received from the committee which had been appointed by the Lieutenant Governor of the Panjáb to consider the matter, and he (MR. BRANDRETH) had added and altered a few things such as his own experience had suggested.

He must not omit to allude to Act XXVI of 1850, the existing Municipal Act, which the Lieutenant Governor had power to introduce into the towns of the Panjáb. This Act seemed to him (MR. BRANDRETH) to contain a tedious and unnecessary process for ascertaining whether the communities should have committees or not. It appeared to him that, if it was admitted that the management of towns could best be conducted by committees, it should not be necessary to ask the consent of the people on that point, while on another and much more important point, as to what mode of taxation the people would least object to, the Act contained no facilities for ascertaining the wishes of the people. This Act (XXVI of 1850) moreover made no provision for the police appointed by the Lieutenant Governor under Act V of 1861, and it left the Lieutenant Governor too little control over the proceedings of the committees in the numerous small towns in which they were appointed. He thought that these infant corporations should be closely watched by Government. Not that the Government should be perpetually interfering with them, but that it should have the power of control wherever it might be necessary. He knew four or five places where Act XXVI of 1850 had been introduced. The committees there were composed either entirely, or in part, of Europeans. They enjoyed a more independent position under this Act, with which the Lieutenant Governor might not wish to interfere, if they had hitherto done their work to the satisfaction of Government. The Lieutenant Governor would be able to exempt any of these places from the complete operation of the present Bill; but he would be able, by extending any one or more of its provisions only, to supply actual deficiencies in Act XXVI, such for instance as the provision for the new Police.

The Motion was put and agreed to.

THE INDIAN SHIPPING BILL, 1867.

The Hon'ble MR. SHAW STEWART introduced the Bill to consolidate and amend the law relating to Merchant Ships, Seamen and Passengers by Sea, and

moved that it be referred to a Select Committee, with instructions to report in six weeks. He said that the Bill had, with His Excellency's permission, been published in the *Gazette of India* on the 6th, 13th and 20th October last. It was found absolutely necessary to amend the law in one or two important points, and the opportunity was taken of examining the existing legislation on these subjects and consolidating these laws into a single Act.

The law was most inconveniently scattered over nine Acts, past at various times from 1838 to 1863. Three Acts related to the mode in which ships belonging to Indian ports could by registration acquire all the privileges of British ships. Three Acts provided for the discipline and protection of Merchant Seamen, and three for the protection and comfort of Native passengers, especially pilgrims to the Red Sea and Persian Gulf. In all, there were nine Acts of the Government of India, besides several local Acts of the local legislatures, which would be consolidated in this Bill. It was very necessary that, in consolidating so many Acts passed at such different times and for such varying objects great care should be taken to ensure accuracy and prevent discrepancies, but he thought the Bill when passed would be a great convenience to the masters and owners of ships and to the public generally.

The amendments specially provided in the Bill, as published, were explained in the Statement of Objects and Reasons The one was to enable the Courts which had now power to investigate charges of incompetency against masters whose certificates were given by the Board of Trade, to enquire into similar cases against masters certificated by the Indian Governments; and the other was to enable the Local Government within whose jurisdiction a vessel had arrived, to exercise the same jurisdiction in ordinary investigations into such charges as was now exercised by the Local Government from whom the master had obtained his certificate. These defects were of great importance, and, unless remedied, would seriously interfere with the execution of the law.

Besides these two points, many suggestions had, since the publication of the Bill, been received from different parts of India, which would all be considered in Committee. The most important of these, he (MR. SHAW STEWART) would shortly describe.

It had been pointed out that power should be given to the Local Governments to remove wrecks on the coasts of India, beyond the limits of harbours and ports, when those wrecks tended to endanger or obstruct the navigation. Government had the power to do this as regarded wrecks within the

limits of ports, but it was proposed to enable them to exercise the same power in all cases where it was necessary.

It was proposed to empower distant officers, like the Resident in the Persian Gulf or the Resident at Aden, to exercise the same power of appointing a Board to investigate wrecks or accidents at sea, that was now exercised by the Local Governments. This would prevent much inconvenience and delay. The power of issuing orders on the reports of these Boards of enquiry would, as now, be restricted to the Local Governments.

Regulations for the periodical survey of coasting steamers had been passed by the Governments of Bombay and Bengal, which it was proposed to amalgamate with this Bill.

A very important point had been raised with regard to the English Merchant Shipping Act of 1854, which appeared to define the duties of a Shipping Master to include the exercise of his discretion in sanctioning the discharge of seamen, even in cases where the master and seamen mutually consented. It had always been held that the Shipping Master ought not to sanction such discharge unless satisfied that the seamen would be provided with a passage home, or with other employment. But by a recent ruling of the High Court of Bengal, it had been held that the Shipping Master had no option but to sanction all discharges when both parties agreed in his presence. The result would be that the country would be flooded with unemployed seamen. He (MR. SHAW STEWART) believed a reference had been made to England, and that the Act would be modified if necessary; but in the meantime it was proposed to insert a Section in this Bill, by which the duties of Indian Shipping Masters would be clearly defined.

Another important defect had been pointed out. The present Act prescribed twelve weeks' imprisonment to any seaman assaulting the master of his ship—the same amount of punishment as was prescribed by the Penal Code for common assault. There seemed no question that an assault committed by a seaman on his master, partook of the nature of mutiny and ought to be more severely punished.

The President of the Bombay Sanitary Commission had made several suggestions for improving the regulations in the Act that affected the comfort of Native passengers to the Red Sea and Persian Gulf. MR. SHAW STEWART thought we ought to do as much as we possibly could for securing the health and comfort of these pilgrims, but at the same time we need not attempt too

much, or we should run the risk of failure by not being able to provide a machinery to carry out the control we aimed at.

There were several other minor points that would be considered by the Committee and which he would not refer to at present.

By the passing of this Bill not less than thirteen Acts of the Government of India and Local Governments would be removed from the Statute-book, and consolidated into one single enactment.

The Motion was put and agreed to.

GANGES TOLLS BILL.

The Hon'ble MR. RIDDELL introduced the Bill to authorize the levy of Tolls for the improvement of the navigation of the Ganges, and moved that it be referred to a Select Committee, with instructions to report in a fortnight. He said that this Bill was one of those which the Hon'ble Mr. Maine had referred to. It was a local Bill for a local purpose, which, if the Lieutenant Governor of the North-Western Provinces had power to legislate, it would not be necessary for this Council to consider. For many years past, a small sum had been allowed by the Government of India for the improvement of the channel of the Ganges between Allahabad and Seenah. The sum hitherto so allowed was Rs. 20,000 per annum, the greater part of which went to defray the cost of the necessary establishment and superintendence, and a very small portion of it was expended in the erection of *Bandhals*, put into sand-banks to force the current into a defined channel. This small sum, he believed, had been very well expended, and some good had been done. But it was not intended to carry out works of a more extensive character, to organize a pilot service and survey establishment, and also to employ a powerful steam dredge, so as to deepen the channel and open the navigation of the river between Dinapore and Allahabad. One of the Captains of a river steam boat had mentioned that the passage between Belaspore and Cohareah occupied at present a fortnight; whereas if the channel were free from difficulties, it would take only one day. He (MR. RIDDELL) thought that this was quite sufficient to justify the measure, by which it was proposed that a toll should be levied so as to provide funds for the permanent improvement of the navigation of the part of the Ganges between Allahabad and Dinapore.

The Motion was put and agreed to.

ADMINISTRATOR GENERAL'S BILL.

The Hon'ble MR. HOBHOUSE introduced the Bill to consolidate and amend the law relating to the office and duties of Administrator General, and moved that it be referred to a Select Committee, with instructions to report in six weeks. He said that the Bill itself was so almost entirely a matter of consolidation that he thought it would be only necessary on this occasion to refer to two or three clauses of it. The first clause to which he would call the attention of the Council was Section 14. As he understood the present state of the law, it was this. The Administrator General could, he believed, in the Presidency of Bombay, collect assets belonging to the estates of certain deceased persons, not being Muhammadans or Hindús, anywhere throughout that Presidency. In the Presidencies of Madras and Bengal, that, he believed, was not quite the case. In certain territories adjacent to the Presidency of Madras, such as, he believed, the Provinces of Mysore and Coorg, the Administrator General could not legally collect the assets of estates. So also in the Presidency of Bengal, it was a question whether the Administrator General could collect assets in the Panjáb, the Central Provinces, and British Burmah, perhaps Oudh also. It was certain he could not now go into the North-Western Provinces for that purpose. Until recently the Administrator General of Bengal had the power to collect assets in those Provinces, but since the establishment of the High Court at Agra he could not do so. What he (MR. HOBHOUSE) understood was the practice in the Panjáb and Central Provinces to which he had alluded, was this. The Administrator General of Bengal, on the occurrence of a death, applied to the different local judicial officers, who then collected and sold the assets, and remitted the proceeds to his office in Calcutta, where he then administered them. It seemed to MR. HOBHOUSE that the Administrators General should legally have that power which they had in practice before, because there could be no doubt in his mind that the office of Administrator General should be maintained for the benefit of the public. Ordinarily an administrator had no knowledge of the law; he was liable to make mistakes, and might also misappropriate assets. In the case of the Administrator General, he had a thorough knowledge of the law from his position and from his profession, and he also was a person who had an office habituated to administer to estates, and who gave security to a large amount for the proper management of the estates which came into his hands. Under these circumstances Section 14 of the Bill provided that the High Court in every Presidency Town should be a competent Court within the meaning of Sections 187 and 190 of the Indian Succession Act, wheresoever within the Presidency the assets might be situate; *i. e.*, that each of the Administrators General of the different Presidencies shoud have power to collect assets everywhere within his Presidency.

The next point to which he would ask the attention of the Council was Section 30. This Section was a permissive Section. He was told that it often happened that persons who took out administration, from want of knowledge of the law or on leaving the country, could not administer to the estates. The rule 'once an administrator always an administrator' prevented the Administrator General from taking over the interest of the administrator, and the consequence was that great inconvenience was suffered by all parties concerned. It seemed 'to him' (MR. HOBHOUSE) that the Administrator General was a person who ought to have the power to replace a legal representative under the circumstances referred to. The private administrator would of course remain liable for acts or omissions previous to the transfer, and the Administrator General would be liable for subsequent acts and omissions.

The next Section, and it would be the last point to which he would call the attention of the Council, was Section 33. As he understood it, the law now was that the Administrator General might be sued in any District by any claimant upon the estate for which the Administrator General had taken out letters of administration. And there existed no means in the Mofussil of instituting an administration suit and thus staying the plaintiff's proceedings. Now, if the Administrator General were to continue to be liable, like any one else, to be sued in any number of Districts in the Presidency, no doubt the estate in his charge would be put to a very great and unnecessary expense. Therefore, this clause provided that, if a suit should be brought against the Administrator General in a Mofussil Court, then, unless the plaintiff should have previously applied to the Administrator General in writing, supporting his claim by the requsite evidence, he should not be entitled either to the costs of the suit or to have the decree enforced.

There was no other clause of the Bill, which was after all a consolidation Act, to which it was necessary to call the attention of the Council.

The Motion was put and agreed to.

INDIAN RAILWAYS' ACT AMENDMENT BILL.

The Hon'ble MR. TAYLOR moved that the Select Committee on the Bill to amend Act No. XVIII of 1854 (relating to Railways in India) be re-constituted, and that the Hon'ble Colonel Durand and the Hon'ble Mr. Riddell be added thereto.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill to extend the Indian Penal Code to the Straits' Settlement —The Hon'ble Messrs. Brandreth, Shaw Stewart and Hobhouse, and the Mover.

On the Bill to extend the Indian Succession Act, 1865, to the Straits' Settlement—The Hon'ble Messrs. Brandreth, Shaw Stewart and Hobhouse and the Mover.

On the Bill to consolidate and amend the law relating to Merchant Ships, Seamen and Passengers by Sea—The Hon'ble Messrs. Maine, Riddell, Hobhouse, Skinner, Cowie and the Mover.

On the Bill to authorize the levy of Tolls for the improvement of the navigation of the Ganges—The Hon'ble Messrs. Maine, Hobhouse, Skinner, Cowie and the Mover.

On the Bill to consolidate and amend the law relating to the office and duties of Administrator General—The Hon'ble Messrs. Maine, Riddell, Skinner and the Mover.

On the Bill to amend Act No. XVIII of 1854 (relating to Railways in India)—His Honour the Lieutenant Governor, the Hon'ble Mr. Maine, the Hon'ble Colonel Durand, the Hon'ble Mr. Riddell and the Mover.

The Council adjourned till the 21st December.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Dept. (*Legislative*).

CALCUTTA,
The 14*th December* 1866.

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 21st December 1866.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding.*
His Honour the Lieutenant-Governor of Bengal.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Mahárájá Dhíráj Mahtab Chand Bahádur, Mahárájá of Burdwan.
The Hon'ble H. P. A. B. Riddell.
The Hon'ble J. E. L. Brandreth.
The Hon'ble M. J. M. Shaw Stewart.
The Hon'ble C. P. Hobhouse.
The Hon'ble D. Cowie.

TRANSSHIPMENT OF GOODS (BOMBAY) BILL.

The Hon'ble MR. SHAW STEWART, in moving for leave to introduce a Bill to facilitate the transshipment of goods imported into Bombay by Steamers, said that the Bill had been prepared under the instructions of the Bombay Government for the following purposes. Within the last few years and since the abolition of the Indian Navy, the mercantile steam navy of Bombay had greatly increased. He believed that, at the present time, not less than ten distinct lines of steamers belonging to more than half that number of companies, had Bombay as one of their terminal points, and there was every reason to suppose that, when Bombay become the chief port of commerce between India and Suez, the number of steamers would increase.

As might be supposed, many of these steamers brought large quantities of goods intended, not for use or import in Bombay, but for transshipment and re-export to other ports, and the inconvenience of the provisions of the Customs' Act as affecting these goods had long been felt.

By the law as it stood, all goods imported into Bombay for transshipment to other ports were dealt with thus: if they were destined for a British port, they might be transshipped and re-exported without payment of duty, on the exporter giving security that they would be duly imported at the port of destination. If they were intended for a foreign port, duty must be paid, but a drawback of seven-eighths was given on re-export. Both these operations occupied much time and effectually prevented goods being transshipped with the same celerity as mails and passengers' luggage. This delay necessitated the landing of the goods instead of simply transshipping them from one steamer to the other, and had given rise to numerous complaints, and the leading steamer companies had urged the adoption of some simpler process.

The plan now proposed by the Government of Bombay was suggested in its main features by the companies themselves. It was proposed to levy a small fee on each package or bale transshipped, instead of going through the long process of examination, valuation, payment of duty and repayment, and preparation of security-bonds that was now required. The privilege would be given under the following conditions: (1) the goods must be imported by a steamer; (2) they must be separately manifested as for re-export; (3) the parties interested must make a special application for the permission; (4) the chief Customs' Officer would at his discretion grant it, or apply the ordinary provision of the Customs' Act. The amount of fees and subsidiary regulations would be laid down by the Local Government.

He (MR. SHAW STEWART) had reason to believe that the Government of Bombay desired that a law on the subject of Bonded Warehouses should be introduced this session, and it might be desirable in that case to consider both Bills together; but having received no instructions on the subject, he contented himself with asking leave to introduce the Bill of which he had given notice.

The Motion was put and agreed to.

MURDEROUS OUTRAGES (PUNJÁB) BILL.

The Hon'ble MR. BRANDRETH, in moving for leave to introduce a Bill for the suppression of murderous outrages in certain districts of the Punjáb, said that the recent murderous attacks, attributable to religious fanaticism, made on Europeans in stations on the Punjáb Frontier, which were the main cause of the present Bill being proposed, were doubtless well known to the Council from the newspapers and other sources, and it would not be necessary that he should enter into their details.

The principal objects of the Bill were two, 1st, to provide for a more speedy mode of trial and giving effect to the sentences passed for the offences to which he had referred, and 2ndly, to provide for attempts at murder, made under fanatical motives, being punishable with death, which they were not under the present Penal Code.

The Council would easily imagine the feeling of utter insecurity, not to say also of vehement indignation, on the part of a small European community, when one of their number lost his life, by the hand of some fanatical miscreant, so long as the murderer remained unpunished. The sentence in such a case might not be carried into effect if the existing law took its ordinary course in less than weeks or even months. If the feeling to which he had referred were unreasonable, no doubt it would be deserving of no consideration by this Council. But it was not unreasonable. There was additional insecurity of life every day that punishment lingered. There was nothing more likely to spread than a fanatical spirit. Crime which had its origin in such motives ought to be met with the speediest retribution. He ought too, that officers in the service of the State, who were obliged to reside in frontier stations, were especially deserving of all the protection which the Legislature could afford them.

This was one of his reasons for introducing this Bill. Another reason was that, when it was known what speedy and certain punishment would follow the crime in accordance with the procedure of this Bill, as compared with all the delays of the present system, this knowledge, it was hoped, would have some effect in preventing the so constant recurrence of this crime. Some further reasons for the Bill might also be adduced. Hitherto the District Officer had, as the phrase ran, taken the law into his own hands. Now take the case, the last which occurred, in which the District Officer put a man to death for an attempt at murder. Attempt at murder was not punishable at all by the Penal Code, and the District Officer had no legal power to try the case. Unless he (MR. BRANDRETH) was very much mistaken, this District Officer was, in a legal and technical point of view, as much guilty of murder as any one could be guilty of any offence under the Penal Code; and yet his act had been approved of and considered morally justifiable. Surely such a disagreement between the legal and moral sense should not be suffered to continue any longer. It was not right to lay on the District Officer the responsibility of thus ignoring the law in order to check these crimes. If a District officer were a less determined man, he might be deterred by the fear of a prosecution such as the late Governor of Jamaica is at present threatened with. If there was reasonable ground for expect-

ing that we had heard the last of these outrages, he (MR. BRANDRETH) should have been far from recommending any change in the existing law. He did not think that our Codes of law, with all the safeguards which they insisted upon, should be set aside to meet a case of barely possible contingency. But there was no reasonable ground for such a hope. This crime had been too frequent of late to justify such an expectation. Not to take into account the crimes which occurred during the earlier period of our possession of the Punjáb, in one year of which, if he recollected aright, no less than four of these crimes were committed, take the last five years or thereabouts. Within that period, no less than five of these cases of murderous outrages took place. In three of these cases the crime was complete. Three Europeans were murdered by fanatics. Four of these cases occurred in the single Division of Peshawur. Besides there had been two or three cases of an exceedingly doubtful character which occured within the same period and in the same Division. One of these cases which he referred to was probably heard of by the Council, that of the Missionary, the Revd. Mr. Lòwenthal, who was murdered two years ago at Peshawur. There was no parallel crime known in the Bengal Presidency.

The mode in which he (MR. BRANDRETH) proposed to provide fôr the speedy trial of these cases was this. By Act XV of 1862, the District Officer was empowered to try all cases not punishable with death which he would otherwise have to commit to the Sessions. By the procedure thus established, all the delays of a preliminary enquiry to which some sixty Sectionts of the Procedure Code were devoted, and other formalities, were avoided. This procedure he proposed to extend to the cases contemplated in this Bill, but the cases would be tried by the Commissioner, not the Magistrate. The Commissioner was the officer of the greatest judicial experience in the Division, and he alone was under the present law empowered to try cases of murder. Provision however would be made for the trial, in the absence of the Commissioner, being conducted by any officer invested with the full powers of a Magistrate.

The other object of the Bill to which he had referred was to punish attempts at murder with death. He thought no one would doubt that, if they were to have a Bill at all, that must form one of the provisions of it. The framers of the Penal Code, he saw it stated in one of the papers connected with this case, because it was framed for non-professional Judges, thought it more safe not to make attempts at murder capital offences. But it was indispensably necessary that the present class of cases should be made an exception to this principle. The presiding officer must have a larger discretion. Of course, so far as would be

consistent with a speedy decision of the case, provision should be made for the trial being as fair and deliberate as possible.

The provisions for this and some other matters which he proposed introducing into the Bill ought to be explained in detail to the Council. But he thought that the explanation would be better made when he should introduce the Bill.

The Motion was put and agreed to.

HORSE-RACING BILL.

The Hon'ble MR. MAINE introduced the Bill to legalize horse-racing in India and moved that it be referred to a Select Committee, with instructions to report in a fortnight. He said that this Bill had for its object the placing of the law of India, as it applied to horse-racing, on the same footing as the law of England. The history of the difference was briefly as follows: There was a long series of English Statutes discountenancing gaming and wagering; but the older Statutes had reference only to particular games stigmatized by the law. Ultimately in 1845, the 8th and 9th Vic., cap. 109, was passed under the influence, as MR. MAINE believed, of the strong popular feeling against gaming-houses. The greatest part of the Act was aimed at common gaming-houses; but Section 18 rendered all contracts by way of gaming or wagering entirely illegal, and declared that they should not be enforced at law or in equity. There, however, followed this proviso—

> Provided always that this enactment shall not be deemed to apply to any subscription or contribution, or agreement to subscribe or contribute for or toward any plate, prize or sum of money to be awarded to the winner or winners of any lawful game, sport, pastime or exercise.

Now there was no question that horse-racing, when the stakes were above £50, was a "lawful game." The earlier Statutes on the subject imposed certain restrictions as to weight and age; but now it was finally settled that horse-racing, limited as above, was lawful. The Indian Act, however, which passed in 1848, and was numbered XXI of 1848, while copying literally the general language of the English Statute as to gaming and wagering, omitted the proviso.

The result was that it had been decided that under the Indian law as it stood, a promise to contribute to a prize or stake dependent on a race might be evaded with impunity. Dishonourable persons appeared to have taken advantage of this state of the law, and the Calcutta Turf Club had addressed to the Council the following petition;—

"That your petitioners are associated together as members of a Club under the name of the Calcutta Turf Club for the purpose of regulating the national pastime of horse-racing with a view to the promotion of true sport and the prevention of fraud.

"That your petitioners steadily keeping this object in view, have drawn up and published, for the guidance of all persons desirous of indulging in the pastime of horse-racing on fair and straight-forward principles, two distinct sets of Rules, the one for the internal management of the affairs of the Club, providing *inter alia* for the expulsion of any member behaving in a manner likely to bring discredit on the Club; the other for the regulation of the terms on which horses are to be aged, weighted and run.

"That certain members from among your petitioners are annually elected to be stewards of the races, and that in that capacity they become trustees of public monies given for the promotion of racing, as well as of certain entrances and stakes payable for the privilege of contesting for the prizes given out of the public monies before mentioned.

"That though the said trustees are in honour bound to pay out of such public monies and private stakes, as far as such will go, the amounts advertised to be given, yet that your petitioners have not the power to prevent evil-minded and dishonourable persons from evading payment of their just contributions in the shape of entries and stakes, such power being taken from them by Act XXI of the Acts of the Governor-General of India in Council for the year 1848.

"That by the 8th and 9th of Victoria, Chapter 109, Section 18, lawful games are expressly excepted from such exclusion as is imposed by Act XXI of 1848 before mentioned.

"That your petitioners respectfully submit that horse-racing cannot be considered in any other light but that of a lawful game, it having been patronized from time immemorial by the highest personages in the realm both in England and in this country.

"That such being the case, the time has come to put horse-racing on the same footing in this country on which it stands in England, and such position cannot be attained unless horse-racing in this country has similarly extended to it the protection of the laws of the realm.

"That your petitioners humbly request that your Excellency will see fit to abrogate Act No. XXI of 1848, in so far as it now applies to horse-racing,

and will pass a short Act in Council to that effect, thus making this noble pastime in reality and not only in name, a lawful game in this country."

The arguments urged by the Club were no doubt entitled to consideration. But MR. MAINE justified the Bill chiefly on the ground that there was nothing in horse-racing which accounted for the law's licensing the immoral act of omitting to perform a definite promise. It would be observed by the Council that the promise in question had nothing in common with a bet or wager and therefore did not fall among the objects which, according to their preamble, the framers of Act XXI of 1848 had in view. Such a promise involved no element of chance or uncertainty. It was a distinct unconditional pledge to pay a sum to the winner, whoever he might be. Impunity accorded to the breaker of such a promise could only be defended by assuming that there was something inherently evil in horse-racing; and if that were so, the law ought to go further. In its present state the law only increased the evils, if any, which attended horse-racing. In all probability the framers of Act XXI had omitted the English proviso, because the distinction in the English law between lawful and unlawful games had no existence in India.

The Motion was put and agreed to.

REMOVAL OF PRISONERS' BILL.

The Hon'ble MR. MAINE introduced the Bill to make further provision for the removal of prisoners, and moved that it be referred to a Select Committee, with instructions to report in four weeks. He said that this was a very simple matter. The Bill was necessitated by the difference of the criminal procedure of the High Courts and of the Courts in the Mofussil. As the law stood, the local Government had power to order the removal of persons sentenced to imprisonment by the Mofussil Courts from one preson to another in the territories of the same Government. But no European or American sentenced to imprisonment by a High Court could be so removed without the consent of the Governor-General in Council. This had been found to cause delay, injurious in some instances to the health of the prisoner, and the first Section of the present Bill, which had been prepared at the suggestion of the Government of Bombay, accordingly proposed to authorize the local Government to order the removal of any prisoner from the jail in which he was confined to any other jail within the territories subject to the same Government.

The next point to which he would refer was the provision embodied in the third section of the Bill. The Governor-General in Council had, under Act

XXIV of 1855, Section 6, power to remove Europeans and Americans sentenced to penal servitude from one prison in British India to another. Under Act III of 1858, Section 8, he had a like power as to State prisoners. But he did not appear to possess any general power of removing convicts from prison to prison. The want of such power being obviously inconvenient, the third Section of the present Bill proposed to authorize the Governor-General in Council to remove any prisoner, whether European, American or Native, and whether sentenced by a High Court or by a Court not established by Royal Charter, from the jail in which he was confined to any other jail in British India.

The remaining Section of the Bill had been introduced under the following circumstances. Under the sixth Section of Act IV of 1849 (for the safe custody of criminal lunatics), the local Government had power to remove to lunatic asylums persons sentenced to imprisonment by any Court. The local Government had a similar power, under Section 396 of the Code of Criminal Procedure, as to criminal lunatics sentenced by the Courts or Magistrates in the Mufussil. But, in consequence of the repeal of Act IV of 1849 by Act XVII of 1862, it appeared to have now no such power as to criminal lunatics sentenced by a High Court. The second Section of the present Bill, which had been transcribed from the Section of the Code of Criminal Procedure which he had mentioned, accordingly propose to authorize the local Government to remove such lunatics to asylums, and in case of recovery to remand them or order them to be discharged. Perhaps the Committee to which the Bill would be referred, might consider it preferable to provide simply that the provisions contained in that Section should apply to the High Courts. There was the more reason for doing so, as the Code now applied to the High Court of the North-Western Provinces and the Chief Court of the Punjáb.

The Motion was put and agreed to.

PUBLIC GAMBLING BILL.

The Hon'ble Mr. Riddell introduced the Bill to provide for the punishment of public gambling and the keeping of common gaming-houses in large towns in the North-Western Provinces of the Presidency of Fort William, and in the Punjáb, Oudh, the Central Provinces and British Burmah, and moved that it be referred to a Select Committee, with instructions to report in three weeks. He said that the Bill had been prepared in accordance with the representations of the Government and Sadar Nizámat of the North-Western Prov-

inces and of the Chief Commissioner of British Burmah. By the passing of the Penal Code, the laws under which gambling was punishable were abrogated, and except where local laws prohibited the practice it had been unchecked. It had been suggested that the clauses of the Penal Code against public nuisances might be used to check public gambling, but practically he believed it had not been found possible so to apply them. The consequences had been that in the North-Western Provinces and Burmah, gambling had increased until its evil effects had led to urgent and repeated representations of the necessity for some legislative action.

In the Punjáb, Oudh and the Central Provinces, the provisions of Sections 10 to 15 of Act No. XXI of 1857, the Calcutta and Howrah Police Act, had been carried out as rules under the authority of the Executive Government; it was now proposed to convert these rules into express legislative enactments.

The testimony of numerous officers was conclusive as to the existence of regular gaming-houses where systematic play was carried on. The Magistrate of Farukhábád stated that play was carried on night and day by bodies of co-partner associates, bound together by mutual agreement and sharing the profits among themselves according to their original interest in the speculation, watchers being stationed near the doors to keep up the Police, who received a precentage on all the winnings. The Commissioner of Kumaon stated that the practice of public gambling had much increased, and that as the Penal Code cancelled the laws which previously existed against gambling, it was presumed that it was sanctioned, and that much crime had been the result.

The provisions of the Bill now before the Council were substantially the same as those of a local Act passed by the Bombay Council, and with the law in the Presidency towns and suburbs, and in the Punjáb and Provinces under the administration of the Government of India. It provided for the punishment of three descriptions of offences within the prescribed limits—

I.—Keeping a common gaming-house.
II.—Gaming in a common gaming-house.
III.—Gaming in a public street.

All these had been prohibited, and the prohibition had been found to work very well in the Provinces which he had named and in the Presidency Towns. Some of the provisions of the Bill would have to be discussed in Committee, as for instance, the provision which authorized the local Government to extend the Act to any town counting more than 5,000 inhabitants. The restriction

would have to be maintained in the North-Western Provinces, and, he believed, also in Bengal. The warrant by which a gaming-house might be entered and searched, must be signed by a Magistrate or an officer invested with the full powers of a Magistrate, and must be executed by no person under the rank of an Inspector.

He saw no reason why separate Acts, almost identical in words, should be provided for different parts of India; namely, one Act for Calcutta and Howrah, one for the town of Madras, another for the Island of Bombay, a fourth for the Presidency of Bombay, a fifth for the Straits Settlement; the Council were now going to pass another Bill for the North-Western Provinces, the Punjáb, Oudh, the Central Provinces and British Burmah; His Honour the Lieutenant-Governor of Bengal would probably soon pass another Bill for Bengal also. He (MR. RIDDELL) thought it would be far better if this Bill were made generally applicable to all India, and provided for an amendent of the Penal Code.

The Hon'ble MR. MAINE merely wished to say that it was desirable to reserve any amendment of the Penal Code until the Code was revised as a whole. He thought that the Section of the Penal Code to which Mr. Riddell had referred might ultimately be altered with advantage. But piece-meal amendments of the Code were undesirable.

The Motion was put and agreed to.

ESCAPED CONVICTS' BILL.

The Hon'ble MR. MAINE introduced the Bill for more effectual punishment of persons resisting lawful apprehension, and for other purposes, and moved that it be referred to a Select Committee, with instructions to report in four weeks. He said that this Bill was necessitated by the difficulty arising from the definition contained in the 40th Section of the Indian Penal Code of the word "offence," which ran as follows:—"The word 'offence' denotes a thing made punishable by this Code." That Section was followed by Sections defining a "special law" and "local law," the former being "a law applicable to a particular subject," such as the Post Office Act and the Railway Act; the latter being "a law applicable only to a particular part of British India," of which it was unnecessary to give any example. Now the question had recently arisen as to whether escape from lawful custody for an offence against some special or local law, but not expressly made punishable by the Code could, as the law stood, be punished at all; for though Section 224 of the Code

provided a punishment for escaping from custody in which any person was detained for an *offence*, that was, as MR. MAINE had said, "a thing made punishable by the Code." There was much conflict of opinion as to whether this applied to a case in which the offence was one merely recognized by the Code as punishable, or whether the definition in Section 40 was to be construed strictly. The present Bill accordingly proposed to preclude these doubts by making the crime referred to penal, whether the offence was punishable by the Code or only under some special or local law. This of course might have been done more shortly by simply substituting for Section 40 of the Code a Section providing that "offence" should denote any thing made punsihable by the Code or by any special or local law, but it would, he thought, be found on examination that this would go too far, and he did not wish at present to propose any substantive amendment of the Penal Code. The Bill would extend the definition of "offence" only as regarded certain specified Sections of the Code. Since the publication of the Bill in the *Gazette*, the Legislative Department had received various communications in favour of making the extended defination proposed to be given to the word "offence" in Sections 224 and 225 apply to the same word in other Sections, as, for example, Section 201 (causing disappearance of evidence), Section 214 (offering a gift in consideration of screening an offender), and several other Sections. These communications would be carefully considered by the Committee to which he hoped the Bill would now be referred.

The Motion was put and agreed to.

PÁNDHARÍ TAX (CENTRAL PROVINCES) BILL.

The Right Hon'ble MR. MASSEY asked for leave to withdraw his motion for leave to introduce a Bill to provide for the re-assessment of the Pándharí tax in certain parts of the Central Provinces.

Leave was given.

The following Select Committees were named:—

On the Bill to legalize horse-racing in India—The Hon'ble Messrs. Shaw Stewart and Hobhouse and the Mover.

On the Bill to make further provision for the removal of prisoners—The Hon'ble Messrs. Riddell, Shaw Stewart and Hobhouse and the Mover.

On the Bill to provide for the punishment of public gambling and the keeping of common gaming-houses in large towns in the North-Western Provinces of the Presidency of Fort William, and in the Punjáb, Oudh, the Central Provinces and British Burmah—The Hon'ble Messrs. Maine, Brandreth, Shaw Stewart and Hobhouse and the Mover.

On the Bill for the more effectual punishment of persons resisting lawful apprehension, and for other purposes—The Hon'ble Messrs. Riddell, Shaw Stewart and Hobhouse and the Mover.

The Council adjourned till the 4th January 1867.

WHITLEY STOKES,

Asst. Secy. to the Govt. of India,

Home Dept. (*Legislative.*)

CALCUTTA,

The 21st December 1866.

C. I. C. P. O. R No. 44 L D—17-5-1906—.